

<p style="text-align: center;">110</p> <p>1 THE WITNESS: I really</p> <p>2 can't say.</p> <p>3 BY MR. BASSMAN:</p> <p>4 Q. Well --</p> <p>5 A. My, my gut feeling is they</p> <p>6 would be better under the historic</p> <p>7 plan.</p> <p>8 Q. Why?</p> <p>9 A. And I'm basing that</p> <p>10 strictly on the information we</p> <p>11 already spoke about people that are</p> <p>12 leaving with larger sums of money.</p> <p>13 Q. Although you do understand</p> <p>14 that in the case of my hypothetical</p> <p>15 28 year old leaving, he's going to</p> <p>16 have to wait at least 25 years to get</p> <p>17 any money paid to him, right?</p> <p>18 A. Right.</p> <p>19 Q. And during that time this</p> <p>20 hypothetical employee could die,</p> <p>21 right?</p> <p>22 A. I would imagine it's within</p> <p>23 the realm of possibility.</p> <p>24 Q. Or in the course of 25</p>	<p style="text-align: center;">112</p> <p>1 amount of money he would get under</p> <p>2 the cash balance plan were lower than</p> <p>3 under the old Atlantic City plan, it</p> <p>4 might be in his self interest to be</p> <p>5 under the cash balance plan because</p> <p>6 he's guaranteed to get his money the</p> <p>7 day he walks out the door, right?</p> <p>8 MR. SAUDER: Objection.</p> <p>9 THE WITNESS: I don't know</p> <p>10 if he gets his money the day he walks</p> <p>11 out the door, but it's liquid in some</p> <p>12 fashion.</p> <p>13 BY MR. BASSMAN:</p> <p>14 Q. And that's an advantage?</p> <p>15 A. I would believe so.</p> <p>16 Q. When you spoke to George in</p> <p>17 1999 about the cash balance plan, did</p> <p>18 you ask him for any documents?</p> <p>19 A. I can't say if I did or</p> <p>20 not. My relationship with him is</p> <p>21 very casual. I've known him for a</p> <p>22 long time prior to either one of our</p> <p>23 employment at ACE, Atlantic City</p> <p>24 Electric, and as I mentioned before,</p>
<p style="text-align: center;">111</p> <p>1 years, something could happen to the</p> <p>2 plan's finances which could hinder</p> <p>3 its ability to pay him, right?</p> <p>4 A. I would imagine so.</p> <p>5 Q. And so if you don't get</p> <p>6 your money immediately when you leave</p> <p>7 the company and it has to sit in a</p> <p>8 pension plan, there's some risk that</p> <p>9 either you're not going to be around</p> <p>10 to get the money or the money's not</p> <p>11 going to be there to pay you, right?</p> <p>12 A. Yes.</p> <p>13 Q. And the portability feature</p> <p>14 of the cash balance plan eliminates</p> <p>15 that risk, right?</p> <p>16 A. It certainly would decrease</p> <p>17 it. That's for sure.</p> <p>18 Q. And decreasing that risk is</p> <p>19 beneficial to, say, my hypothetical</p> <p>20 28 year old, right?</p> <p>21 A. I would imagine it would</p> <p>22 be, yes.</p> <p>23 Q. So for that person it's</p> <p>24 certainly possible that even if the</p>	<p style="text-align: center;">113</p> <p>1 he was a direct report of mine.</p> <p>2 Q. Did he offer to provide you</p> <p>3 any documents in 1999?</p> <p>4 A. No.</p> <p>5 Q. Did George provide you with</p> <p>6 the name of anyone else whom you</p> <p>7 could follow up with with questions</p> <p>8 about the cash balance plan?</p> <p>9 A. No.</p> <p>10 Q. Did you ask him for a</p> <p>11 follow-up name?</p> <p>12 A. No. I can't say that I</p> <p>13 did.</p> <p>14 Q. Outside of talking to</p> <p>15 George -- by the way, just before I</p> <p>16 go there, is there anything else that</p> <p>17 you remember that either you said or</p> <p>18 George said in that conversation in</p> <p>19 1999 that you haven't told me</p> <p>20 already?</p> <p>21 A. No, I can't say that there</p> <p>22 is.</p> <p>23 Q. Outside of talking to</p> <p>24 George in 1999, did you take any</p>



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<p style="text-align: center;">122</p> <p>1 because I believe one of these 2 locations that was close to me was 3 closed, and that's maybe why the 4 rescheduling. 5 Q. So George mentioned to you 6 in 1999 that there will be a series 7 of meetings that will answer your 8 questions about the cash balance 9 plan, right? 10 A. At some point, yeah. Yes. 11 Q. But you were never invited 12 to any such meeting? 13 A. No. 14 Q. Did you follow up with 15 anyone in HR to ask why you hadn't 16 been invited to a meeting about the 17 cash balance plan after George told 18 you they were going to occur? 19 A. I can't say that I did. 20 Q. Do you see any factual 21 statements in Defendant's Exhibit 13 22 based on your view today that you 23 believe are false? 24 MR. SAUDER: Objection.</p>	<p style="text-align: center;">124</p> <p>1 A. I can't say that I do. 2 Q. You can put this one in the 3 finished pile. 4 If you could take a look at 5 what's previously been marked as 6 Defendant's Exhibit 19. 7 Have you had a chance to 8 look over Defendant's Exhibit 19? 9 A. Yep. 10 Q. Ever seen this before? 11 A. Nope. 12 Q. Ever see a document before 13 with the heading Summary Plan 14 Description? 15 A. No, I have not. 16 Q. Has any representative of 17 HR at Conectiv ever told you that you 18 could review a copy of a Summary Plan 19 Description? 20 A. No, they have not. 21 Q. If you could hand that 22 back. 23 A. (Witness complies.) 24 Q. By the way, Mr. Fink, I</p>
<p style="text-align: center;">123</p> <p>1 THE WITNESS: I can't 2 identify any, no. 3 BY MR. BASSMAN: 4 Q. And, again, obviously, just 5 the best of your knowledge. 6 You can put this one to the 7 side. 8 Take a look at what's been 9 previously marked, please, as 10 Defendant's Exhibit 14. 11 A. Okay. 12 Q. Have you had a chance to 13 look over Defendant's Exhibit 14? 14 A. Yes. 15 Q. Ever seen this document 16 before? 17 A. No. 18 Q. In your review of this 19 document just now, did you see any 20 factual statements in it that you 21 believe are false? 22 MR. SAUDER: Objection. 23 BY MR. BASSMAN: 24 Q. You can answer.</p>	<p style="text-align: center;">125</p> <p>1 don't know if you have a preference 2 for when you would like to break for 3 lunch. I notice it's a little after 4 12. 5 A. No preference whatsoever. 6 Q. Okay. If at any time you 7 start to feel your stomach rumbling 8 and you'd like to take a break and 9 get some food, just let me know. 10 Otherwise, I'll probably take a lunch 11 stop relatively soon. 12 A. That's fine. 13 Q. I'll have you take a look 14 at what's been previously marked 15 Defendant's Exhibit 22. 16 MR. SAUDER: This document 17 is marked MWW 308 through MWW 311. I 18 think we established yesterday that 19 the last page of the document 311 was 20 inadvertently stapled to this 21 document. 22 MR. BASSMAN: That's 23 correct, yes. 24 BY MR. BASSMAN:</p>



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40 (Pages 154 to 157)

<p style="text-align: center;">154</p> <p>1 was electronic e-mail, but there was 2 not a plethora of the systems that we 3 have now. The whole arena has 4 evolved, as you well know, remarkably 5 in the last ten years. 6 Q. You mentioned earlier that 7 you had heard about Local 210 8 repeatedly rejecting the cash balance 9 plan. Did you ever hear about any 10 dispute between Local 210 and 11 Conectiv about the interest rate that 12 should be used to calculate lump sum 13 payments under the old Atlantic City 14 plan? 15 A. I may have, now that you 16 brought that up. There may have been 17 some -- some kind of rhetoric I heard 18 in passing and didn't pay any 19 attention to it because it really 20 didn't affect me at this time. They 21 may have used the wrong rate at one 22 point. I can't really say. It could 23 be just really gossip. 24 Q. And this would, again, be</p>	<p style="text-align: center;">156</p> <p>1 like, and, again, I'm talking about 2 your ideal form of relief that you 3 would get from the court, is that for 4 everybody who started, you know, 5 before 1999 roughly, to go back, to 6 have their pensions go back under the 7 old Atlantic City plan, right? 8 A. Yes. 9 Q. Anybody who's come to work 10 for Conectiv after the ACE DelMarVa 11 merger, you have no objection to them 12 remaining in the cash balance plan? 13 A. I may have no objection? 14 They may have no objection, but I 15 would not have an objection. 16 Q. Do you feel like the 17 interest of employees who started 18 before the ACE DelMarVa merger and 19 those who started after are the same 20 in regards to the cash balance plan? 21 A. They're similar in nature. 22 Q. Are they different at all? 23 A. Well, there's no 24 grandfathering basically for those</p>
<p style="text-align: center;">155</p> <p>1 gossip from your acquaintances who 2 are officials in the Local? 3 A. Yes. 4 Q. If you win this lawsuit, 5 Mr. Fink, what would you like the 6 court to do? 7 A. What would I like the court 8 to do? 9 Q. Yeah. 10 A. My personal spin on that, 11 I would like to see some change in 12 the -- well, ideally, I'd like for 13 everybody to be made whole. Meaning 14 those of us that were pre-merger 15 hires, not anybody that's 16 subsequently been hired by this 17 newly-formed corporation, go back 18 into the existing Heritage plans, 19 DelMarVa, Atlantic. 20 It's interesting that Pepco 21 elected not to do anything with their 22 Heritage plan on this last merger 23 other than retain it. 24 Q. So what you would ideally</p>	<p style="text-align: center;">157</p> <p>1 people, so that is an issue. 2 However, I mean, we all know that 3 there's portability for them. But 4 other than that, there are some 5 subtle differences, but there are 6 other things that are unchanged, caps 7 at 650 percent of a five-year average 8 salary. That would remain unchanged. 9 Q. So you think that for the 10 employees who are hired after the ACE 11 DelMarVa merger, they also have an 12 interest in seeing the cash balance 13 plan declared illegal and the old 14 Atlantic City plan put back in its 15 place? 16 A. If I was in that particular 17 boat, that would be the direction I'd 18 be rowing. 19 Q. How come? 20 A. Just based on what I've 21 said all along, 650 percent cap for 22 starts. 23 Q. Anything else? 24 A. I'm not convinced what</p>



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42 (Pages 162 to 165)

<p style="text-align: center;">162</p> <p>1 understanding that to figure out the 2 lump sum payment that you get under 3 the cash balance plan, all you have 4 to do is look at your account 5 balance? 6 A. Would you repeat that 7 again? 8 Q. Sure. If you wanted to 9 figure out what your lump sum payment 10 on retirement would be from the cash 11 balance plan, all you have to do is 12 look at your account balance? 13 A. Basically, that's correct. 14 Q. And we looked earlier at 15 some statements you got from Vanguard 16 that showed your account balance here 17 by year. Do you recall that? 18 A. Yes, I do. 19 Q. I'd like to just pull those 20 out again. It was Defendant's 21 Exhibit 31, which I'm handing over to 22 you right now. If you could just 23 flip through your Vanguard statements 24 year by year, Mr. Fink, and confirm</p>	<p style="text-align: center;">164</p> <p>1 A. That's also correct. 2 Q. For the old Atlantic City 3 plan, did you have any understanding 4 that the amount of annuity payment 5 you get each year would be some 6 factor of number times your average 7 pay times your years of service? 8 A. That was part of the high 9 level outline I told you was in the 10 handbook. 11 Q. And so under that formula 12 under the old Atlantic City plan, 13 when you retired, no matter which 14 year you retired, if you have the 15 same salary and years of service, you 16 know, whether you retired in 2001, 17 2002, 2003, your annuity payment will 18 be the same, right? 19 MR. SAUDER: Can you repeat 20 the question? 21 BY MR. BASSMAN: 22 Q. Sure. Let me rephrase 23 that. I think that was a little 24 confusing.</p>
<p style="text-align: center;">163</p> <p>1 for me that every year your ending 2 account balance increased. 3 A. That's correct. 4 Q. Do you have any 5 understanding as to how if an annuity 6 would be calculated under the old 7 Atlantic City plan, if you opted to 8 take your retirement benefit as an 9 annuity? 10 A. No. I would have no 11 knowledge whatsoever. 12 Q. Same question under the 13 cash balance plan. Any idea if you 14 opted to take your benefits there as 15 an annuity, how the annuity would be 16 calculated? 17 A. I believe that's part of 18 the Estimator. 19 Q. So you would find out by 20 looking on the Estimator? 21 A. That's correct. 22 Q. But you don't personally 23 know how the Estimator comes up with 24 the number?</p>	<p style="text-align: center;">165</p> <p>1 One of the things we talked 2 about earlier is you mentioned under 3 the old Atlantic City plan, because 4 the government multiplier changes 5 from year to year, two employees with 6 the exact same years of service and 7 salary history could get different 8 lump sum payments depending on which 9 calendar year they retired in. 10 A. Yes. 11 Q. My only question was, if 12 you take those same two hypothetical 13 people again, same exact salary 14 history, same exact number of years 15 of service, one retires in 2000, one 16 retires in 2002, they're both under 17 the old Atlantic City plan, they both 18 opt to have their pensions paid as an 19 annuity, isn't it correct that the 20 annuity would be identical for both 21 of them? 22 MR. SAUDER: Objection. 23 THE WITNESS: No. 24 BY MR. BASSMAN:</p>



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45 (Pages 174 to 177)

<p style="text-align: center;">174</p> <p>1 benefits?</p> <p>2 A. Under the old plan?</p> <p>3 Q. Under the old plan.</p> <p>4 A. There's no surviving</p> <p>5 benefits, survivor benefits.</p> <p>6 Q. And same question, but this</p> <p>7 time under the cash balance plan. If</p> <p>8 you were to die today, what happens</p> <p>9 to your benefits under the cash</p> <p>10 balance plan?</p> <p>11 A. That lump sum goes to</p> <p>12 whoever the designated person is.</p> <p>13 Q. Like in a 401(k)?</p> <p>14 A. That's correct.</p> <p>15 Q. Do you view that enhanced</p> <p>16 survivor benefit as a positive</p> <p>17 feature of the cash balance plan?</p> <p>18 A. One could interpret that as</p> <p>19 being a positive.</p> <p>20 Q. For example, if there were</p> <p>21 a 30-year-old employee who was</p> <p>22 diagnosed with a terminal illness,</p> <p>23 wouldn't that person be better off</p> <p>24 with a cash balance plan with</p>	<p style="text-align: center;">176</p> <p>1 view the plan as discriminating on</p> <p>2 the basis of age?</p> <p>3 A. No.</p> <p>4 Q. Let's take each one of</p> <p>5 those starting with the</p> <p>6 grandfathering. Who are the victims</p> <p>7 of age discrimination when it comes</p> <p>8 to grandfathering?</p> <p>9 A. All those people that were</p> <p>10 long-term employees that were not 50</p> <p>11 years old at the particular time the</p> <p>12 cash balance was instituted.</p> <p>13 Q. So younger long-term</p> <p>14 employees were the victims?</p> <p>15 A. The middle ground people.</p> <p>16 Not the real young ones that would</p> <p>17 probably benefit from cash balance.</p> <p>18 The ones that are in between, the</p> <p>19 Mike Charles type of guys that were</p> <p>20 very close and didn't -- had fell</p> <p>21 slightly short for years of service</p> <p>22 or months short in age that are</p> <p>23 stranded.</p> <p>24 Q. Now, you said the real</p>
<p style="text-align: center;">175</p> <p>1 survivor benefits that could help</p> <p>2 support their family than under the</p> <p>3 old Atlantic City plan?</p> <p>4 A. Possibly.</p> <p>5 Q. Do you understand that one</p> <p>6 of the allegations in your Complaint</p> <p>7 is that the cash balance plan</p> <p>8 discriminates on the basis of age?</p> <p>9 A. Yes.</p> <p>10 Q. How do you understand the</p> <p>11 cash balance plan discriminates on</p> <p>12 the basis of age?</p> <p>13 A. The same dollar that</p> <p>14 somebody would put in at 25 years old</p> <p>15 does not necessarily represent the</p> <p>16 same thing for somebody at 40 years</p> <p>17 old when you multiply it all the way</p> <p>18 out.</p> <p>19 There's also, in my mind,</p> <p>20 which might not be necessarily</p> <p>21 correct, I look at the age</p> <p>22 discrimination thing goes back to</p> <p>23 grandfathering for me.</p> <p>24 Q. Any other ways that you</p>	<p style="text-align: center;">177</p> <p>1 young people benefit from the cash</p> <p>2 balance plan?</p> <p>3 A. I don't know if I said the</p> <p>4 real young people benefit, but what</p> <p>5 we have said earlier in this</p> <p>6 conversation is that there's</p> <p>7 circumstances that would possibly be</p> <p>8 more beneficial to them, portability,</p> <p>9 those type of things.</p> <p>10 Q. So for some real young</p> <p>11 people, some of them may be better</p> <p>12 off in the cash balance plan than the</p> <p>13 old Atlantic City plan?</p> <p>14 A. In my mind if we're talking</p> <p>15 about mobility, portability, or if</p> <p>16 we're talking about dollars.</p> <p>17 Q. If you wanted to figure out</p> <p>18 if the cash balance plan or the old</p> <p>19 Atlantic City plan was better for a</p> <p>20 young person -- by young I mean, say,</p> <p>21 someone under 30 -- do you believe</p> <p>22 that you would have to sit down and</p> <p>23 talk with that person and find out</p> <p>24 what their particular goals and plans</p>



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<p style="text-align: center;">178</p> <p>1 are?</p> <p>2 A. I would imagine it would be</p> <p>3 beneficial. I mean, you're making a</p> <p>4 decision for somebody that you have</p> <p>5 no knowledge of what their</p> <p>6 aspirations are. Maybe they have a</p> <p>7 desire to work for five years.</p> <p>8 Maybe -- maybe they're of</p> <p>9 the mindset that they'd like to have</p> <p>10 a long-term career in that</p> <p>11 particular, you know, position that</p> <p>12 they're in, or in that particular</p> <p>13 company that they're in.</p> <p>14 Q. So if you really wanted to</p> <p>15 figure out what's in the interest of</p> <p>16 any 26-year-old employee of Conectiv</p> <p>17 today, the best way to find out would</p> <p>18 be to sit down and talk to that</p> <p>19 person and find out what their goals</p> <p>20 and aspirations are, right?</p> <p>21 MR. SAUDER: Objection.</p> <p>22 THE WITNESS: I would</p> <p>23 imagine you would have to solicit</p> <p>24 some sort of response from them,</p>	<p style="text-align: center;">180</p> <p>1 the grandfather benefits?</p> <p>2 A. 50 years old or 20 years of</p> <p>3 service.</p> <p>4 Q. At what time? 50 years as</p> <p>5 of what date?</p> <p>6 A. The first of '99.</p> <p>7 Q. Okay. So for the oldest or</p> <p>8 longest serving employees of Conectiv</p> <p>9 as of 1999 were the recipients of the</p> <p>10 grandfather benefits, right?</p> <p>11 A. Well, they either had the</p> <p>12 age or the years of service. One or</p> <p>13 the other.</p> <p>14 Q. And it's the recipients of</p> <p>15 the grandfather benefits who are the</p> <p>16 people being discriminated in -- whom</p> <p>17 Conectiv was discriminating in favor</p> <p>18 of?</p> <p>19 A. In theory, someone could</p> <p>20 work for five years for the</p> <p>21 corporation, be 50 years old and be</p> <p>22 grandfathered, and I could be 47</p> <p>23 years old and have 20 years in and</p> <p>24 not be grandfathered. I don't think</p>
<p style="text-align: center;">179</p> <p>1 verbal, written, or otherwise.</p> <p>2 BY MR. BASSMAN:</p> <p>3 Q. Now, going back to</p> <p>4 grandfathering, you mentioned that</p> <p>5 the middle guys, I assume like you</p> <p>6 and Mr. Charles, are the worst off,</p> <p>7 right?</p> <p>8 A. Him more so than me.</p> <p>9 Q. Why him more so than you?</p> <p>10 A. He was -- he has longer</p> <p>11 service than I. He's older than I</p> <p>12 am. He was just very close to</p> <p>13 grandfathering and just missed it.</p> <p>14 Q. Do you consider yourself</p> <p>15 one of these middle guys?</p> <p>16 A. Basically, yes.</p> <p>17 Q. And the beneficiaries, the</p> <p>18 people being discriminated in favor</p> <p>19 of, are the older, the oldest</p> <p>20 employees, right?</p> <p>21 A. Can you say that again?</p> <p>22 Q. Sure. Well, let me ask you</p> <p>23 this way. What is your understanding</p> <p>24 of the criteria for qualifying for</p>	<p style="text-align: center;">181</p> <p>1 that that's appropriate.</p> <p>2 Q. And, in fact, in that case,</p> <p>3 the company is, in the hypothetical</p> <p>4 you gave, the company is</p> <p>5 discriminating against you because</p> <p>6 you're younger, right?</p> <p>7 A. In my mind.</p> <p>8 Q. Now, you also mentioned as</p> <p>9 another reason why you think the cash</p> <p>10 balance plan is age discriminatory</p> <p>11 that the same dollar someone earns at</p> <p>12 20 is not going to be the same as a</p> <p>13 dollar earned by someone at age 45.</p> <p>14 I was wondering if you could just</p> <p>15 explain that.</p> <p>16 MR. SAUDER: Outside any</p> <p>17 communications you had with counsel.</p> <p>18 THE WITNESS: I can't.</p> <p>19 BY MR. BASSMAN:</p> <p>20 Q. Okay. So --</p> <p>21 A. Based on that statement.</p> <p>22 Q. Okay. So just to be clear,</p> <p>23 for that particular theory of age</p> <p>24 discrimination, your knowledge only</p>



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EXHIBIT 3

CONDENSED TRANSCRIPT

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

PORTIONS CONFIDENTIAL

J. MICHAEL CHARLES; MAURICE W.
WARD, JR.; and JOSEPH I. FINK, JR.,
on behalf of themselves and
all others similarly situated,
Plaintiff

V

C.A. No. 05-702(SLR)

PEPCO HOLDINGS, INC.; CONECTIV, and
PEPCO HOLDINGS RETIREMENT PLAN,
Defendants

- - -

THOMAS S. TROUP, on behalf of himself
and all others similarly situated,
Plaintiff

V

C.A. No. 06-10(SLR)

PEPCO HOLDINGS, INC.; CONECTIV, and
PEPCO HOLDINGS RETIREMENT PLAN,
Defendants

Oral deposition of MAURICE
W. WARD, JR., taken at the law
offices of Pepper Hamilton LLP, 3000
Two Logan Square, Eighteenth and Arch
Streets, Philadelphia, Pennsylvania,
on Wednesday, January 10, 2007,
commencing at 9:40 a.m., before
Barbara McKeon Quinn, a Registered
Merit Reporter and Notary Public,
pursuant to notice.



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215.7 -

<p style="text-align: center;">58</p> <p>1 BY MR. BASSMAN:</p> <p>2 Q. Okay. With that</p> <p>3 correction, do you remember if</p> <p>4 anything was in the status fields?</p> <p>5 A. No, I don't.</p> <p>6 Q. Okay. I see you ran two</p> <p>7 estimates on December 22nd, 2006. Do</p> <p>8 you see that?</p> <p>9 A. Yes.</p> <p>10 Q. Why were you running</p> <p>11 estimates on December 22nd?</p> <p>12 A. I don't remember. I just</p> <p>13 wanted to get updated numbers. If</p> <p>14 you look through -- maybe to explain</p> <p>15 it.</p> <p>16 Each of the documents</p> <p>17 it's -- it doesn't give you a lot of</p> <p>18 information on what I requested at</p> <p>19 that time. So the estimated years of</p> <p>20 service come out zero and zero.</p> <p>21 Q. Uh-huh.</p> <p>22 A. So a lot of the old</p> <p>23 documents I don't remember.</p> <p>24 At the time I would have,</p>	<p style="text-align: center;">60</p> <p>1 meetings.</p> <p>2 Q. Okay. Do you remember</p> <p>3 receiving any documents about the</p> <p>4 cash balance plan conversion?</p> <p>5 A. I do remember receiving</p> <p>6 some generic documents.</p> <p>7 Q. Did you read them?</p> <p>8 A. Yes.</p> <p>9 Q. When Conectiv makes -- I</p> <p>10 assume from time to time Conectiv</p> <p>11 makes documents available to</p> <p>12 employees about the pension plan.</p> <p>13 A. That's correct.</p> <p>14 Q. And it also sends you</p> <p>15 documents on the plan as well, right?</p> <p>16 A. Periodically, yes.</p> <p>17 Q. And do you read those</p> <p>18 documents?</p> <p>19 A. I don't, I don't read them</p> <p>20 all in full.</p> <p>21 Q. Do you believe that your</p> <p>22 pension rights are important?</p> <p>23 A. Yes.</p> <p>24 Q. And that the amount of your</p>
<p style="text-align: center;">59</p> <p>1 because I hit the buttons, because</p> <p>2 you put the year you want to collect</p> <p>3 your money and the year you want to</p> <p>4 retire and they can be different and</p> <p>5 it would give you a different number.</p> <p>6 So I was just checking the</p> <p>7 Pension Estimator at that time.</p> <p>8 Q. You can put this aside.</p> <p>9 Put it sort of in the middle of the</p> <p>10 table would be good.</p> <p>11 You mentioned that in '98</p> <p>12 there were a couple of initial</p> <p>13 meetings about the cash balance plan.</p> <p>14 A. That's correct.</p> <p>15 Q. Did you attend any meetings</p> <p>16 in 1999 about the cash balance plan?</p> <p>17 A. I don't remember. I know I</p> <p>18 attended one or two meetings. I know</p> <p>19 the first one I think was at the end</p> <p>20 of '98; the second one could have</p> <p>21 been in early '99, but...</p> <p>22 Q. Okay. You specifically</p> <p>23 remember there were two meetings.</p> <p>24 A. I think I attended two</p>	<p style="text-align: center;">61</p> <p>1 pension is important for your</p> <p>2 personal financial planning, right?</p> <p>3 A. Yes.</p> <p>4 Q. Given the importance of the</p> <p>5 pension for your personal financial</p> <p>6 planning, do you try to pay</p> <p>7 particular attention to</p> <p>8 communications about your rights</p> <p>9 under your pension plan?</p> <p>10 A. I do now.</p> <p>11 Q. When did you start?</p> <p>12 A. Around 2004.</p> <p>13 Q. And before then?</p> <p>14 A. Not really, no.</p> <p>15 Q. We've been going by the way</p> <p>16 for about an hour. So I just wanted</p> <p>17 to see, I'm about to segue into going</p> <p>18 through a number of documents. So I</p> <p>19 just wanted to see how you're doing,</p> <p>20 if you need a break, or you want to</p> <p>21 keep going.</p> <p>22 MR. SAUDER: You want to</p> <p>23 take a break? It's up to you.</p> <p>24 THE WITNESS: I'm fine.</p>



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<p style="text-align: center;">70</p> <p>1 it was a lot of documents.</p> <p>2 Q. And do you remember what</p> <p>3 information Ms. McHenry gave you?</p> <p>4 A. Same thing. I don't have</p> <p>5 any specifics. I didn't keep a log</p> <p>6 of who gave me what, so I don't</p> <p>7 really know.</p> <p>8 Q. You do remember that both</p> <p>9 of them gave you documents, though.</p> <p>10 A. Yes, I do.</p> <p>11 Q. And did they give you hard</p> <p>12 copy documents or did they forward</p> <p>13 things by e-mail?</p> <p>14 A. Hard copy documents.</p> <p>15 Q. Did they give you any</p> <p>16 information on top of what was in the</p> <p>17 documents?</p> <p>18 A. No.</p> <p>19 Q. And did you call both Mr.</p> <p>20 Rose and Ms. McHenry to ask them if</p> <p>21 they had any documents?</p> <p>22 A. I don't recall how I got</p> <p>23 the information from them, if I asked</p> <p>24 them or if they just asked me if I</p>	<p style="text-align: center;">72</p> <p>1 fourth page of this exhibit, which</p> <p>2 has the Bates number — and those are</p> <p>3 the little numbers in the corner that</p> <p>4 lawyers put on them. JMC 447.</p> <p>5 A. Yes.</p> <p>6 Q. Do you see there's some</p> <p>7 handwriting on this page?</p> <p>8 A. Yes.</p> <p>9 Q. Do you recognize the</p> <p>10 handwriting?</p> <p>11 A. No, I don't.</p> <p>12 Q. You can put this one to the</p> <p>13 side.</p> <p>14 A. (Witness complies.)</p> <p>15 Q. Okay. Number 4 now. I ask</p> <p>16 you to take a look at what's</p> <p>17 previously been marked Defendant's</p> <p>18 Exhibit 4. If you could just take a</p> <p>19 look over that.</p> <p>20 A. Okay.</p> <p>21 Q. Have you had a chance to</p> <p>22 look over Defendant's 4?</p> <p>23 A. Yes.</p> <p>24 Q. Have you ever — well,</p>
<p style="text-align: center;">71</p> <p>1 needed anything.</p> <p>2 Q. Has anyone, any other</p> <p>3 employee at Conectiv, asked you about</p> <p>4 the status of this lawsuit?</p> <p>5 A. Probably the majority of</p> <p>6 the people in the Atlantic region.</p> <p>7 Yes, a large number of people.</p> <p>8 Q. And what have you told</p> <p>9 them?</p> <p>10 A. To check the website.</p> <p>11 Q. Check the Chimicles firm's</p> <p>12 website?</p> <p>13 A. That's correct.</p> <p>14 Q. Have you ever provided any</p> <p>15 more detail than that?</p> <p>16 A. I don't remember specifics.</p> <p>17 Maybe comments, that it's going okay</p> <p>18 or just generic information.</p> <p>19 Q. Anybody ever ask you</p> <p>20 whether you thought you had a strong</p> <p>21 or a weak case?</p> <p>22 A. They have, and I couldn't</p> <p>23 give them a response, so...</p> <p>24 Q. If you could turn to the</p>	<p style="text-align: center;">73</p> <p>1 first let me ask you, have you seen</p> <p>2 this document before?</p> <p>3 A. I don't remember seeing it,</p> <p>4 no.</p> <p>5 Q. Have you seen documents in</p> <p>6 this format with the fax heading on</p> <p>7 it?</p> <p>8 A. Yes, I have.</p> <p>9 Q. And in what context have</p> <p>10 you seen them?</p> <p>11 A. Around the office</p> <p>12 they're — and I can't remember how</p> <p>13 often we got them. They might have</p> <p>14 been weekly at the time or monthly or</p> <p>15 some, some periodic cycle we would</p> <p>16 get information.</p> <p>17 Q. And so on some periodic</p> <p>18 basis management at Conectiv would</p> <p>19 send to your internal mailbox a</p> <p>20 document like this titled facts,</p> <p>21 F-A-C-T-S?</p> <p>22 A. I'm not sure how we got</p> <p>23 them. Whether it went to a mailbox</p> <p>24 or just somebody handed them out or</p>



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<p style="text-align: center;">74</p> <p>1 they sat on a table somewhere, but 2 they were around the office. 3 Q. And they were available? 4 A. Yes. 5 Q. Do you remember always 6 reading each issue of facts? 7 A. No. 8 Q. Why didn't you read them 9 all? 10 A. Can't answer that. 11 Q. In hindsight do you think 12 you should have? 13 A. There was a lot of stuff 14 going on then, and like I said 15 before, we were bidding our jobs, we 16 were closing departments. 17 You know, there was a lot 18 of stuff that was being finalized, 19 but the compensation package and 20 benefit package that just wasn't as 21 important -- maybe it should have 22 been, but... 23 Q. Well, with full 20/20 24 hindsight, do you wish that you had</p>	<p style="text-align: center;">76</p> <p>1 A. I don't recall, no. 2 Q. Did you take any notes? 3 A. I don't remember taking 4 any, no. It was just general 5 information. 6 Q. Were there any documents 7 passed out at those meetings? 8 A. I don't remember. 9 Q. Looking at Defendant's 10 Exhibit 4, there's a heading that 11 begins -- you see New Cash Balance 12 Plan towards the bottom of the first 13 page? 14 A. Yes. 15 Q. From the text that begins 16 under that heading Until Now, do you 17 see that? 18 A. Yes. 19 Q. From Until Now to the end 20 of this document, do you see any 21 representations that you believe are 22 inaccurate? 23 A. No. I don't see anything 24 inaccurate.</p>
<p style="text-align: center;">75</p> <p>1 paid more attention to communications 2 about compensation and benefit issues 3 back in 1998 and 1999? 4 A. Yes. 5 Q. Do you feel that there was 6 information out there that you could 7 have accessed at the time that you 8 didn't? 9 A. There could have been more 10 information than I did look for, yes. 11 I'm sure there was. 12 Q. And I assume in 1998 and 13 1999 you weren't trying to uncover 14 information about the compensation 15 and benefit package, right? 16 A. That's correct. 17 Q. You never, as far as you 18 can recall, you never called anyone 19 at HR and asked any questions about 20 it? 21 A. No. Not that I recall, no. 22 Q. When you attended these two 23 meetings, did you ask any questions 24 of the presenter?</p>	<p style="text-align: center;">77</p> <p>1 Q. I just noticed you were 2 glancing at the first page. If you 3 could also take a look at the back 4 two pages. Just make sure that you 5 don't see anything inaccurate in them 6 either. 7 A. I don't see anything 8 inaccurate that I can see. 9 Q. Okay, thanks. You can put 10 that one to the side in the done 11 pile. 12 Let's skip ahead to 13 Defendant's Exhibit 6. If you could 14 take a look over that. 15 A. Okay. 16 Q. Have you had an opportunity 17 to review Exhibit 6? 18 A. Yes. 19 Q. Have you ever seen this 20 document before? 21 A. Yes. 22 Q. And did you receive a copy 23 on or about December 21, 1998? 24 A. I don't remember. Again, I</p>



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21 (Pages 78 to 81)

<p style="text-align: center;">78</p> <p>1 don't remember when I saw it. It 2 could have been a year and a half ago 3 or could have been in 1998. I don't 4 remember. 5 Q. Do you have any reason to 6 believe you didn't receive a copy of 7 what's been marked as Defendant's 8 in December of '98? 9 A. No. 10 Q. In December of '98, do you 11 believe you would have been a 12 Conectiv management employee? 13 A. Yes. 14 Q. When you looked over this 15 document just now, Defendant's 16 Exhibit 6, did you see any 17 representations that you believe are 18 inaccurate? 19 MR. SAUDER: Objection to 20 form. You can answer. 21 THE WITNESS: Huh? 22 MR. SAUDER: You can 23 answer. 24 THE WITNESS: Oh. No.</p>	<p style="text-align: center;">80</p> <p>1 Q. You mentioned that there 2 are Your Conectiv Total Rewards 3 publications that are handed out or 4 given. Do you read each one that's 5 handed out or given? 6 A. No. I don't know if I've 7 read them all. 8 Q. Do you make an effort to 9 read them all? 10 A. I would glance over them. 11 Not word for word probably. 12 Q. Why don't you read them all 13 word for word? 14 A. Don't know. Can't answer 15 that. 16 Q. Sitting here with perfect 17 hindsight today, January 2007, do you 18 wish that you had read them all word 19 for word? 20 A. Yes. 21 Q. Would you have acted 22 differently if you read them all word 23 for word in 1998 and 1999? 24 MR. SAUDER: Objection to</p>
<p style="text-align: center;">79</p> <p>1 BY MR. BASSMAN: 2 Q. Put this one to the side. 3 Let's take a look at 4 Defendant's Exhibit 7. If you could 5 take a look over that one. 6 A. Okay. 7 Q. Have you had a chance to 8 look over Defendant's 7? 9 A. Yes. 10 Q. Have you ever seen this 11 document before? 12 A. Again, yes, I have, but I 13 don't know when. 14 Q. Have you ever seen 15 documents before with the title Your 16 Conectiv Total Rewards? 17 A. Yes. 18 Q. In what context? 19 A. I might be confusing 20 that -- I think it's the Conectiv 21 Totals Rewards we get -- I think in 22 Atlantic City Electric also Total 23 Rewards as a publication handed out 24 or given.</p>	<p style="text-align: center;">81</p> <p>1 form. 2 BY MR. BASSMAN: 3 Q. You can answer. 4 A. I don't think so. 5 Q. In your review of 6 Defendant's 7, did you see any 7 representations that you believe are 8 inaccurate? 9 MR. SAUDER: Objection to 10 form. 11 THE WITNESS: The -- 12 BY MR. BASSMAN: 13 Q. Feel free to take another 14 look if you want to. 15 A. Okay. The, the charts and 16 the graphs and the what if and the 17 person making this amount of money 18 over this many years, I don't know 19 how accurate that is I mean, but as 20 far as -- and that goes with all the 21 other documents and saying I could 22 correct something. 23 I can't -- I have no way to 24 validate that these charts and graphs</p>



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25 (Pages 94 to 97)

<p style="text-align: center;">94</p> <p>1 of calculations on the Pension</p> <p>2 Estimator and that you did this after</p> <p>3 speaking with Mr. Rehr. Do you</p> <p>4 recall that testimony?</p> <p>5 A. Yes.</p> <p>6 Q. And the reason that you</p> <p>7 wanted to run calculations on the</p> <p>8 Pension Estimator was to compare how</p> <p>9 your benefits under the cash balance</p> <p>10 plan compared to the old plan; is</p> <p>11 that right?</p> <p>12 A. That's correct.</p> <p>13 Q. How did you figure out what</p> <p>14 your benefits were under the old</p> <p>15 plan?</p> <p>16 A. I basically couldn't for</p> <p>17 the lump sum. Had to approximate</p> <p>18 them based on Mr. Rehr's approximate</p> <p>19 numbers he gave me.</p> <p>20 Q. So you just used Mr. Rehr's</p> <p>21 numbers as a proxy for your own?</p> <p>22 A. That's correct. Because we</p> <p>23 make roughly the same amount of money</p> <p>24 with -- would have approximately the</p>	<p style="text-align: center;">96</p> <p>1 A. No, not that I'm aware of.</p> <p>2 Q. Do you know of any other</p> <p>3 Conectiv employee who when they</p> <p>4 retired opted for an annuity instead</p> <p>5 of a lump sum?</p> <p>6 A. No.</p> <p>7 Q. Let's take a look at</p> <p>8 Defendant's Exhibit 9.</p> <p>9 A. Okay.</p> <p>10 Q. Have you ever seen this</p> <p>11 document before?</p> <p>12 A. I don't recall seeing it,</p> <p>13 no.</p> <p>14 Q. Have you ever seen other</p> <p>15 documents titled InSight, a Conectiv</p> <p>16 employee newsletter?</p> <p>17 A. Yes, I have.</p> <p>18 Q. In what context?</p> <p>19 A. I have just seen the</p> <p>20 InSight name. I do remember seeing</p> <p>21 issues. I don't recall what issues,</p> <p>22 but I have seen them.</p> <p>23 Q. Have you ever seen the</p> <p>24 InSight letter delivered to your</p>
<p style="text-align: center;">95</p> <p>1 same years of service.</p> <p>2 Q. Did Mr. Rehr give you the</p> <p>3 amount -- first off, let me back up</p> <p>4 for a second. Did Mr. Rehr take a</p> <p>5 lump sum or an annuity when he</p> <p>6 retired?</p> <p>7 A. Lump sum.</p> <p>8 Q. And did he tell you the</p> <p>9 amount of the lump sum?</p> <p>10 A. Not the exact amount.</p> <p>11 Q. Did he give you a ballpark</p> <p>12 figure?</p> <p>13 A. He did, yes.</p> <p>14 Q. What was it?</p> <p>15 A. It was in -- I don't recall</p> <p>16 the exact number but it was over</p> <p>17 600,000.</p> <p>18 Q. You mentioned earlier that</p> <p>19 you spoke to several individuals who</p> <p>20 were retiring.</p> <p>21 A. Yes, that's correct.</p> <p>22 Q. Did any of those</p> <p>23 individuals opt for an annuity</p> <p>24 instead of a lump sum?</p>	<p style="text-align: center;">97</p> <p>1 internal mailbox at the company?</p> <p>2 A. I don't recall.</p> <p>3 Q. Have you ever received a</p> <p>4 copy of an InSight newsletter?</p> <p>5 A. An InSight, yes, I have,</p> <p>6 but I don't know how I received it.</p> <p>7 Q. Anything secret about</p> <p>8 what's in an InSight newsletter as</p> <p>9 far as you know?</p> <p>10 MR. SAUDER: Objection.</p> <p>11 BY MR. BASSMAN:</p> <p>12 Q. You can answer.</p> <p>13 A. Anything --</p> <p>14 Q. Secret.</p> <p>15 A. -- secret? Not that I'm</p> <p>16 aware of, no.</p> <p>17 Q. You can put this to the</p> <p>18 side.</p> <p>19 MR. SAUDER: Just noting</p> <p>20 for the record that document starts</p> <p>21 on PHI 3428, the next page is 3426,</p> <p>22 and that's page number 6, so this</p> <p>23 appears to be an incomplete document.</p> <p>24 BY MR. BASSMAN:</p>



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<p style="text-align: center;">98</p> <p>1 Q. Have you ever read any 2 InSight newsletters? 3 A. I can't recall what copies 4 I would have read, but I think I 5 have, yes. 6 Q. Do you try to read every 7 InSight newsletter that you receive? 8 A. No. 9 Q. Why not? 10 A. Just never took the time to 11 read them. 12 Q. Let's take a look at 13 Defendant's 10. Can you take a look 14 over Defendant's 10? 15 A. Okay. 16 Q. Have you had a chance to 17 look over Defendant's Exhibit 10? 18 A. Yes. 19 Q. Ever seen this before? 20 A. I don't recall seeing it. 21 Q. If you look at the third 22 paragraph, I refer your attention 23 there. 24 A. Yes.</p>	<p style="text-align: center;">100</p> <p>1 no. 2 Q. In your review of 3 Defendant's Exhibit 10, did you see 4 any representations that you think 5 are inaccurate? 6 MR. SAUDER: Objection. 7 Objection to the form. 8 Objection to the fact that 9 it calls for an opinion, and 10 objection to the fact that if there's 11 anything in here with regard to 12 whether it calls for a legal opinion 13 by a lay witness, and I would make 14 that same objection with regard to 15 every other time that question was 16 asked. 17 BY MR. BASSMAN: 18 Q. You can answer. 19 A. I don't -- I don't see 20 anything that's inaccurate. 21 Q. Let's put this one aside. 22 Moving right along. Let's 23 take a look at Number 11. Have you 24 had an opportunity to review</p>
<p style="text-align: center;">99</p> <p>1 Q. You see the second sentence 2 begins, Recent stories? Could you 3 just read that sentence aloud that 4 begins Recent stories. 5 A. Okay. Recent -- do you 6 want me to read it aloud? 7 Q. Yes. 8 A. "Recent stories in the 9 national media have raised concerns 10 about some cash balance plans that do 11 not offer the same level of financial 12 security or grandfathering provisions 13 as cash -- Conectiv's cash balance 14 pension plan." 15 Q. Thanks. Do you remember 16 hearing any discussion in or around 17 June 23rd, 1999 of stories in the 18 national media raising concerns about 19 cash balance plans? 20 A. No, I don't. 21 Q. Did you ever in 1999 try to 22 research any media stories about cash 23 balance plans? 24 A. I don't recall doing so,</p>	<p style="text-align: center;">101</p> <p>1 Defendant's 11? 2 A. Yes. 3 Q. Have you ever seen this 4 document before? 5 A. I don't remember seeing it, 6 no. 7 Q. Okay. You can put that one 8 aside. You can put that one in the 9 finished pile. 10 Take a look at Defendant's 11 Exhibit 12. Have you had an 12 opportunity to look over Defendant's 13 Exhibit 12? 14 A. Yes. 15 Q. Have you ever seen this 16 before? 17 A. I don't remember seeing it. 18 Q. Have you ever seen any 19 documents titled InSight Online? 20 A. No, I don't. That probably 21 wouldn't have been a document if it 22 was online too, so... 23 Q. Okay. Is there an intranet 24 at Conectiv?</p>



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<p style="text-align: center;">130</p> <p>1 meetings and stuff.</p> <p>2 Q. About this lawsuit?</p> <p>3 A. Yeah. Yes.</p> <p>4 MR. BASSMAN: Have these</p> <p>5 been withheld as privileged?</p> <p>6 MR. SAUDER: Dates of</p> <p>7 meetings with regard to e-mails?</p> <p>8 MR. BASSMAN: Whatever</p> <p>9 these e-mails that have been</p> <p>10 exchanged between Mr. Ward and Mr.</p> <p>11 Charles.</p> <p>12 MR. SAUDER: We may not</p> <p>13 have a copy of the e-mails that were</p> <p>14 exchanged with regard to the dates to</p> <p>15 depositions and dates to anything</p> <p>16 else relevant to this litigation.</p> <p>17 So if you want to request a</p> <p>18 copy, you know, we can certainly see</p> <p>19 if we can get copies of them and take</p> <p>20 a look at them and see if there's any</p> <p>21 privilege or any work product.</p> <p>22 MR. BASSMAN: I would ask</p> <p>23 if you could go and search Mr. Ward's</p> <p>24 e-mail account from his home e-mail</p>	<p style="text-align: center;">132</p> <p>1 MR. BASSMAN: Page nine,</p> <p>2 yes.</p> <p>3 THE WITNESS: Starting out</p> <p>4 Reformation of the?</p> <p>5 BY MR. BASSMAN:</p> <p>6 Q. Yes.</p> <p>7 A. Okay.</p> <p>8 Q. Do those two bullets I just</p> <p>9 directed you to accurately reflect</p> <p>10 what you would like the court to do</p> <p>11 in this case?</p> <p>12 A. Yes.</p> <p>13 Q. And that would be to</p> <p>14 eliminate the cash balance plan and</p> <p>15 reinstate the old plan, right?</p> <p>16 A. That's correct.</p> <p>17 Q. And do you think that you</p> <p>18 will be better off financially if the</p> <p>19 court were to do that?</p> <p>20 A. Yes.</p> <p>21 Q. If it were to turn out that</p> <p>22 your retirement benefits were higher</p> <p>23 under the cash balance plan than they</p> <p>24 would have been under the old plan,</p>
<p style="text-align: center;">131</p> <p>1 to see if he has any responsive</p> <p>2 documents, because we think those</p> <p>3 would be encompassed in our document</p> <p>4 requests.</p> <p>5 MR. SAUDER: Okay.</p> <p>6 MR. BASSMAN: Thanks.</p> <p>7 BY MR. BASSMAN:</p> <p>8 Q. The same document,</p> <p>9 Defendant's 25. If you could turn to</p> <p>10 page eight. You see the heading that</p> <p>11 says Rule 26 (a)(1)(C) Disclosure</p> <p>12 Damage Computation?</p> <p>13 A. Yes.</p> <p>14 Q. If you could turn to the</p> <p>15 next page. Under that heading</p> <p>16 there's a bullet -- I want you to</p> <p>17 look at the second and third bullets.</p> <p>18 If you could read over them</p> <p>19 and confirm for me that this is the</p> <p>20 relief that you personally would like</p> <p>21 from the court if you won this</p> <p>22 lawsuit.</p> <p>23 MR. SAUDER: Are you on</p> <p>24 page nine?</p>	<p style="text-align: center;">133</p> <p>1 would you change your mind?</p> <p>2 MR. SAUDER: Objection to</p> <p>3 the form.</p> <p>4 BY MR. BASSMAN:</p> <p>5 Q. You can answer.</p> <p>6 A. No. Because of the age,</p> <p>7 because of the age also. The age 65</p> <p>8 versus age 55 retirement date.</p> <p>9 Q. I'm not sure I follow. Can</p> <p>10 you explain what you mean?</p> <p>11 A. In the ACE plan, in the</p> <p>12 traditional Atlantic plan that we</p> <p>13 have now I could retire at 55 with no</p> <p>14 reduction in benefit. At age -- I'd</p> <p>15 have to work until I'm 65 under the</p> <p>16 Conectiv cash balance plan.</p> <p>17 So I would have to work ten</p> <p>18 more years basically to get a similar</p> <p>19 benefit.</p> <p>20 Q. Besides losing the early</p> <p>21 retirement option that was in the old</p> <p>22 ACE plan, has the cash balance plan</p> <p>23 conversion harmed you in any way?</p> <p>24 MR. SAUDER: Objection.</p>

<p style="text-align: center;">154</p> <p>1 believe they're incorrect or not?</p> <p>2 A. No. That's correct.</p> <p>3 Q. I want you to look over</p> <p>4 these statements Defendant's Exhibit</p> <p>5 26 through 30. Can you confirm for</p> <p>6 me that each year your ending account</p> <p>7 balance is higher than it was for the</p> <p>8 previous year?</p> <p>9 A. Yes.</p> <p>10 Q. And in fact, since the cash</p> <p>11 balance plan has been in effect, has</p> <p>12 your account balance ever decreased?</p> <p>13 A. You mean the ending</p> <p>14 balance?</p> <p>15 Q. Yeah.</p> <p>16 A. No.</p> <p>17 Q. It always goes higher each</p> <p>18 time you get a statement?</p> <p>19 A. By some number, yes.</p> <p>20 Q. Have you ever called</p> <p>21 Vanguard to discuss anything that</p> <p>22 appeared on your cash balance plan</p> <p>23 statement?</p> <p>24 A. No.</p>	<p style="text-align: center;">156</p> <p>1 as to why the cash balance plan is</p> <p>2 age discriminatory?</p> <p>3 MR. SAUDER: You can answer</p> <p>4 to the extent you don't violate any</p> <p>5 attorney-client communications.</p> <p>6 THE WITNESS: Are you</p> <p>7 talking about in our Complaint?</p> <p>8 BY MR. BASSMAN:</p> <p>9 Q. I'm just talking in</p> <p>10 general. Let me back up for a</p> <p>11 second.</p> <p>12 Is it your personal belief,</p> <p>13 just yes or no sitting here today,</p> <p>14 that the Conectiv cash balance plan</p> <p>15 is age discriminatory?</p> <p>16 A. Yes.</p> <p>17 Q. When did you form that</p> <p>18 belief?</p> <p>19 A. Around 2004.</p> <p>20 Q. During your discussions</p> <p>21 with Mr. Rehr?</p> <p>22 A. Yes.</p> <p>23 Q. And in 2004, what was the</p> <p>24 basis of your belief that the cash</p>
<p style="text-align: center;">155</p> <p>1 Q. Ever communicated with</p> <p>2 Vanguard in any way about your cash</p> <p>3 balance plan account?</p> <p>4 A. No.</p> <p>5 MR. SAUDER: Just to</p> <p>6 clarify, with the exception of --</p> <p>7 MR. BASSMAN: With the</p> <p>8 exception of Pension Estimator.</p> <p>9 THE WITNESS: Yes.</p> <p>10 MR. BASSMAN: I was leaving</p> <p>11 that to the side. That's a good</p> <p>12 clarification.</p> <p>13 BY MR. BASSMAN:</p> <p>14 Q. Okay. You can put those</p> <p>15 aside.</p> <p>16 I want to talk to you a</p> <p>17 little bit about your claims you've</p> <p>18 asserted in your Complaint. Do you</p> <p>19 understand that one of the claims</p> <p>20 that you have asserted against</p> <p>21 Conectiv is that the cash balance</p> <p>22 plan is age discriminatory?</p> <p>23 A. Yes.</p> <p>24 Q. What is your understanding</p>	<p style="text-align: center;">157</p> <p>1 balance plan is age discriminatory?</p> <p>2 A. Because I was converted to</p> <p>3 a plan in my early forties that gave</p> <p>4 me a reduced benefit that I couldn't</p> <p>5 make up in the remaining years I have</p> <p>6 before I reach retirement age.</p> <p>7 Q. Okay. So just so I'm a</p> <p>8 little clear on what the issue is</p> <p>9 here, if the cash balance plan had</p> <p>10 existed from your first day at</p> <p>11 Atlantic City, you wouldn't have</p> <p>12 considered it age discriminatory?</p> <p>13 A. Not based on the</p> <p>14 information I have, no.</p> <p>15 Q. Interest credits are given</p> <p>16 to everyone the same amount</p> <p>17 regardless of age -- same rate,</p> <p>18 excuse me, regardless of age each</p> <p>19 year?</p> <p>20 MR. SAUDER: Objection.</p> <p>21 Can you rephrase the question?</p> <p>22 MR. BASSMAN: Sure.</p> <p>23 BY MR. BASSMAN:</p> <p>24 Q. I'll make it a little</p>



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45 (Pages 174 to 177)

<p style="text-align: center;">174</p> <p>1 either Mr. 30 year old won't be here 2 to get the money or the money won't 3 be there for him in 25 years, right? 4 A. Yes. 5 Q. And you eliminate that risk 6 when you can get an immediate lump 7 sum payment under the cash balance 8 plan, right? 9 A. Yes. 10 Q. And there's real value to 11 eliminating that risk, isn't there? 12 MR. SAUDER: Objection. 13 THE WITNESS: I'm sure 14 there is, yes. 15 BY MR. BASSMAN: 16 Q. I mean it's a benefit of 17 the cash balance plan. 18 A. Sure. 19 Q. It's a positive thing. 20 A. Yes. 21 Q. Now, switching gears for a 22 minute. We spent a lot of time this 23 morning going over many documents 24 from '97, '98 and '99 about the cash</p>	<p style="text-align: center;">176</p> <p>1 MR. SAUDER: I'm sorry. 2 Can you just repeat that question. 3 (The reporter read back the 4 following testimony: 5 "Q. And again, leaving 6 aside anything that may have been 7 discussed between you and your 8 attorney, looking back, is there any 9 information that you wished had been 10 orally presented to you at the two 11 meetings you attended about the cash 12 balance conversion?") 13 MR. SAUDER: I would just 14 object to the form, but if you 15 understand the question you can 16 answer. 17 THE WITNESS: The two 18 meetings I attended were very 19 general. So I mean, I mean the plan 20 wasn't even -- I don't even think the 21 plan was actually formalized by that 22 point in time. So I mean -- 23 BY MR. BASSMAN: 24 Q. I'll ask it even more</p>
<p style="text-align: center;">175</p> <p>1 balance conversion. I assume you 2 recall having looked through all 3 those this morning. 4 A. Yes. 5 Q. Do you believe that any of 6 those documents omitted information 7 that should have been included in the 8 notice to you? 9 MR. SAUDER: Again, I would 10 just object to the extent that it 11 involves any attorney-client 12 communication. 13 THE WITNESS: With the 14 exception of information we've 15 discussed, I'm not aware of any. 16 BY MR. BASSMAN: 17 Q. And again, leaving aside 18 anything that may have been discussed 19 between you and your attorney, 20 looking back, is there any 21 information that you wished had been 22 orally presented to you at the two 23 meetings you attended about the cash 24 balance conversion?</p>	<p style="text-align: center;">177</p> <p>1 broadly then. 2 Other than what you may 3 have discussed with your attorneys, 4 is there anything at all that you 5 wish in hindsight Conectiv had 6 communicated to you in 1998 and 1999 7 about the cash balance plan 8 conversion? 9 A. Not the conversion as much 10 as the plan itself, because it was 11 presented to me, the things I 12 remember about the cash balance plan 13 presentations were the rah, rah about 14 how good it would be for us, and not 15 how there was such a dramatic 16 difference at, at age 55 or 65 at the 17 time of retirement. 18 So I had no, no 19 understanding it was that dramatic of 20 a difference until just a few years 21 ago. 22 Q. So in retrospect, you 23 wished that in 1998 and 1999 Conectiv 24 had given you more detail comparing</p>



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<p style="text-align: center;">170</p> <p>1 BY MR. BASSMAN:</p> <p>2 Q. Well, how old are you, sir?</p> <p>3 A. 51 and a half. Almost 52.</p> <p>4 Q. Okay. So if you decided to</p> <p>5 take a job with a new employer today,</p> <p>6 under the cash balance plan you could</p> <p>7 receive your current account balance</p> <p>8 as a lump sum, right?</p> <p>9 A. That's correct.</p> <p>10 Q. If the old ACE plan were in</p> <p>11 place, if you switched to another job</p> <p>12 today, could you receive your</p> <p>13 benefits today in a lump sum payment?</p> <p>14 A. No. I'm not aware, no.</p> <p>15 Q. As far as you know.</p> <p>16 A. As far as I know I</p> <p>17 couldn't, no.</p> <p>18 Q. Do you consider that to be</p> <p>19 an advantage, the ability to know</p> <p>20 that you can switch jobs and get an</p> <p>21 immediate pension payment?</p> <p>22 A. Not when the number would</p> <p>23 be that much smaller. I would just</p> <p>24 wait until I'm 55 and get my ACE</p>	<p style="text-align: center;">172</p> <p>1 know, I don't have those numbers.</p> <p>2 BY MR. BASSMAN:</p> <p>3 Q. In your experience at</p> <p>4 Conectiv, do you know anyone when</p> <p>5 they retired or left the company who</p> <p>6 turned down an option to take an</p> <p>7 immediate lump sum payment?</p> <p>8 A. As in? Could you, could</p> <p>9 you rephrase?</p> <p>10 Q. Sure. One of the things</p> <p>11 you mentioned in response to my</p> <p>12 hypothetical about a 30 year old</p> <p>13 employee who might want to change</p> <p>14 jobs is they might have thought that</p> <p>15 they'd be better off letting their</p> <p>16 money sit in the ACE plan and taking</p> <p>17 it at age 55 rather than taking a</p> <p>18 lump sum right now in the cash</p> <p>19 balance plan, right?</p> <p>20 A. Possibly.</p> <p>21 Q. I was just wondering if in</p> <p>22 your experience at Conectiv if you</p> <p>23 know anyone who when they had the</p> <p>24 chance to take an immediate lump sum</p>
<p style="text-align: center;">171</p> <p>1 plan.</p> <p>2 Q. What about for an employee</p> <p>3 who is just -- again, you know, to</p> <p>4 the best of your understanding, an</p> <p>5 employee who's 30 years old who's</p> <p>6 thinking about switching jobs after</p> <p>7 working at Conectiv for ten years.</p> <p>8 Do you believe they would</p> <p>9 be in a better position under the</p> <p>10 cash balance plan than the old ACE</p> <p>11 plan?</p> <p>12 MR. SAUDER: Objection</p> <p>13 THE WITNESS: I can't</p> <p>14 answer that question for somebody</p> <p>15 else. I don't know. There might</p> <p>16 still be. I don't know their</p> <p>17 numbers.</p> <p>18 There could be a dramatic</p> <p>19 difference between their cash balance</p> <p>20 and they're vested at ACE plan, if</p> <p>21 they're under the ACE plan.</p> <p>22 So they might want to leave</p> <p>23 that in the ACE plan, too, until</p> <p>24 they're 55 and then draw it. You</p>	<p style="text-align: center;">173</p> <p>1 on leaving the company turned it</p> <p>2 down.</p> <p>3 A. I don't know of anybody.</p> <p>4 Q. One of the things that you</p> <p>5 mentioned is a 30 year old could</p> <p>6 leave the money to sit for 25 years,</p> <p>7 right, and take their pension at 55?</p> <p>8 A. If they were vested I think</p> <p>9 they can. To my knowledge.</p> <p>10 Q. Assuming they're vested.</p> <p>11 A. Okay.</p> <p>12 Q. There is a risk, isn't</p> <p>13 there, that the 30 year old could</p> <p>14 die? We're talking under the old ACE</p> <p>15 plan.</p> <p>16 A. Uh-huh.</p> <p>17 Q. There's a risk, isn't</p> <p>18 there, that the 30 year old could die</p> <p>19 in the intervening years, right?</p> <p>20 A. Oh, yeah.</p> <p>21 Q. A risk that the plan could</p> <p>22 become insolvent?</p> <p>23 A. Yes.</p> <p>24 Q. A risk that the money</p>



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<p style="text-align: center;">186</p> <p>1 A. Yes. And if you put down a 2 different dates, the number changes. 3 Q. When you say if you put 4 down different dates, different dates 5 for either one? 6 A. Yes. Yes. So if I put 7 last day worked today, but I don't 8 draw my pension until 2020, it 9 changes the Pension Estimator, which 10 I don't know if it's valid even, but 11 it allows you to do it. 12 Q. Okay. 13 A. But that's why there's a 14 lot of numbers there. 15 Q. Another question, and this 16 is even of the old ACE plan, and I 17 apologize if this question is about 18 to become a little morbid, but if 19 there were never a cash balance plan 20 and you were still under the old ACE 21 plan and you were to die today, what 22 is your understanding as to what 23 happens to your pension benefit? 24 A. It's my understanding --</p>	<p style="text-align: center;">188</p> <p>1 MR. SAUDER: Objection. 2 THE WITNESS: More 3 generous. 4 MR. BASSMAN: Okay. That's 5 all I've got. I don't know if you 6 have any questions. 7 MR. SAUDER: I have no 8 questions. 9 MR. BASSMAN: You guys are 10 reading and signing? 11 MR. SAUDER: Yes. 12 MR. BASSMAN: You are a 13 free man. 14 (Testimony concluded at 15 2:30 p.m.) 16 17 18 19 20 21 22 23 24</p>
<p style="text-align: center;">187</p> <p>1 it's my understanding that under the 2 cash balance plan I think my, whoever 3 the survivor is, would get some 4 portion or some of it. 5 Q. Leaving aside the cash 6 balance plan. Under the old plan. 7 A. Under the ACE plan? I'm 8 not sure. 9 Q. Did you ever read or hear 10 anything about how under the ACE plan 11 if you were to die before you began 12 drawing your pension, that your 13 surviving spouse would only get half 14 of your pension, not the full 15 pension? 16 A. I don't remember reading 17 that, but I assume there is a 18 difference because of the way the 19 wording in the cash balance plan is, 20 so... 21 Q. And in this respect, in 22 terms of surviving benefits on death, 23 is the cash balance plan more or less 24 generous than the old ACE plan?</p>	<p style="text-align: center;">189</p> <p>1 WITNESS CERTIFICATION 2 3 I hereby certify that I 4 have read the foregoing transcript of 5 my deposition testimony, and that my 6 answers to the questions propounded, 7 with the attached corrections or 8 changes, if any, are true and 9 correct. 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24</p> <p>DATE MAURICE W. WARD, JR.</p> <p>PRINTED NAME</p>



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EXHIBIT 4

CONDENSED TRANSCRIPT

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

PORTIONS CONFIDENTIAL

J. MICHAEL CHARLES; MAURICE W.
WARD, JR.; and JOSEPH I. FINK, JR.,
on behalf of themselves and
all others similarly situated,
Plaintiff

V

C.A. No. 05-702 (SLR)

PEPCO HOLDINGS, INC.; CONECTIV, and
PEPCO HOLDINGS RETIREMENT PLAN,
Defendants

- - -

THOMAS S. TROUP, on behalf of himself
and all others similarly situated,
Plaintiff

V

C.A. No. 06-10 (SLR)

PEPCO HOLDINGS, INC.; CONECTIV, and
PEPCO HOLDINGS RETIREMENT PLAN,
Defendants

Oral deposition of JEROME
MICHAEL CHARLES, taken at the law
offices of Pepper Hamilton LLP, 3000
Two Logan Square, Eighteenth and Arch
Streets, Philadelphia, Pennsylvania,
on Tuesday, January 9, 2007,
commencing at 9:39 a.m., before
Barbara McKeon Quinn, a Registered
Merit Reporter and Notary Public,
pursuant to notice.



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<p style="text-align: center;">46</p> <p>1 Q. Did you raise the issue or 2 did he?</p> <p>3 A. I can't say, because when 4 you're having lunch with someone you 5 just have conversations. I may have 6 said it; he may have said it. I 7 really don't remember.</p> <p>8 Q. What prompted you to start 9 having conversations with people 10 about cash balance plans two or three 11 years ago?</p> <p>12 A. When coworkers started to 13 retire, they would make offhand 14 comments to me and other people. 15 Those comments circled around the 16 difference between the -- because 17 those folks who were grandfathered 18 had a choice between two plans, the 19 old retirement plan and the cash 20 balance plan.</p> <p>21 And they would make offhand 22 comments of the difference monetarily 23 between those two, significant 24 difference, and that's what captured</p>	<p style="text-align: center;">48</p> <p>1 MR. MALONE: You're going 2 to spell those names.</p> <p>3 THE WITNESS: Yes.</p> <p>4 BY MS. YU:</p> <p>5 Q. Who are they?</p> <p>6 A. Karen Ayars, George Pinto, 7 Greg Peterson, Annette Ponzio, Rich 8 Simimoni, Scott Razzie. I don't know 9 if I said Rich Simimoni. I apologize 10 if I said it before.</p> <p>11 MR. MALONE: I think you 12 had.</p> <p>13 THE WITNESS: Okay. There 14 were many more, but right off the top 15 of my head I can't pull every single 16 name. If I had known ahead of time I 17 would have written them all down.</p> <p>18 BY MS. YU:</p> <p>19 Q. Do you know whether they 20 took lump sum benefits?</p> <p>21 A. Do I know why they took the 22 lump sum?</p> <p>23 Q. Whether.</p> <p>24 A. Oh, whether. No, I don't</p>
<p style="text-align: center;">47</p> <p>1 my attention.</p> <p>2 Q. What were those 3 differences?</p> <p>4 A. They were in forms of 5 percentages. In other words, the ACE 6 plan might be fifty percent more than 7 the cash balance plan for that 8 individual.</p> <p>9 Q. Did you ever get any more 10 detailed information from them about 11 the particulars of their benefits?</p> <p>12 A. I never wanted to ask 13 anyone how much money they have. 14 That's not appropriate. What I would 15 ask them is just to supply me with a 16 percentage difference which I felt 17 was reasonable, and they had no 18 objections to it.</p> <p>19 Q. How many people did you ask 20 about that?</p> <p>21 A. 12, 20 people.</p> <p>22 MR. MALONE: You know 23 what's coming next.</p> <p>24 THE WITNESS: Yes, I do.</p>	<p style="text-align: center;">49</p> <p>1 know that.</p> <p>2 Q. Just to clarify, you're not 3 certain what form of retirement 4 benefit they took; is that right?</p> <p>5 A. I have to assume the 6 majority of people who do retire take 7 the lump sum, but I can't say that 8 100 percent because that's their 9 business.</p> <p>10 Q. So just so I understand, 11 you didn't ask them specifically that 12 question, whether they took a lump 13 sum or some other form?</p> <p>14 A. They may have volunteered 15 it, but I didn't ask.</p> <p>16 Q. Do you recall whether 17 anybody ever said that they took 18 anything other than a lump sum?</p> <p>19 A. There may have been some 20 conversation one person may have 21 decided to take an annuity.</p> <p>22 Q. Do you recall who that 23 person was?</p> <p>24 A. May have been -- this is a</p>



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<p style="text-align: center;">50</p> <p>1 new name -- Skip Castaldi, 2 C-A-S-T-A-L-D-I. 3 Q. Did you also ask him about 4 the difference between the cash 5 balance plan and the grandfathered 6 plan? 7 A. He was a supervisor of mine 8 at that point. I think it was 9 inappropriate to ask him. 10 MR. MALONE: Can I hear the 11 answer? 12 (The reporter read back the 13 following testimony: 14 "A. He was a supervisor of 15 mine at that point. I think it was 16 inappropriate to ask him.") 17 BY MS. YU: 18 Q. So you did not ask him? 19 A. No. He just stated that he 20 was deciding that he might take the 21 annuity. 22 Q. Approximately how many 23 people in the ACE division of PHI 24 have you spoken with about cash</p>	<p style="text-align: center;">52</p> <p>1 would come up in the conversation, we 2 started discussing the cash balance 3 versus the old plan. These were a 4 mixture of grandfathered, 5 non-grandfathered employees. 6 Obviously the 7 non-grandfathered employees were not 8 real happy with the predicament that 9 they were in and was hoping that 10 something would happen to allow them 11 to be in a better position to retire. 12 MR. MALONE: Can I have the 13 question and answer read back? 14 (The reporter read back the 15 following testimony: 16 "Q. Other than the folks 17 who retired, what kind of 18 conversations have you had with 19 people who say are still currently 20 employed?" 21 "A. When that would come 22 up in the conversation, we started 23 discussing the cash balance versus 24 the old plan. These were a mixture</p>
<p style="text-align: center;">51</p> <p>1 balance plan? 2 A. 20, 30 people. I don't 3 know off the top of my head. 4 Q. Is there anyone in addition 5 to those names that you've listed 6 that you can recall from the ACE 7 division that you've had 8 conversations with? 9 A. I had some e-mails that I 10 had asked questions concerning of 11 none of those individuals listed. 12 Q. I'm trying to sort of 13 categorize the kind of conversations 14 that you've had, and so far we've 15 talked about conversations that 16 you've had with coworkers or others 17 regarding their pensions. 18 Other than the folks who 19 retired, what kind of conversations 20 have you had with people who say are 21 still currently employed? 22 MR. MALONE: Object to the 23 form of the question. 24 THE WITNESS: When that</p>	<p style="text-align: center;">53</p> <p>1 of grandfathered, non-grandfathered 2 employees. 3 "Obviously the 4 non-grandfathered employees were not 5 real happy with the predicament that 6 they were in and was hoping that 7 something would happen to allow them 8 to be in a better position to 9 retire.") 10 MR. MALONE: Thank you. 11 I'm just having trouble hearing over 12 the air conditioning sometimes. 13 BY MS. YU: 14 Q. Did you have any other 15 kinds of conversations about cash 16 balance plans with employees or 17 retirees of ACE? 18 MR. MALONE: Object to the 19 form of the question. 20 THE WITNESS: I'm not sure 21 what you mean by different 22 conversations. I don't quite 23 understand that question. 24 BY MS. YU:</p>



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<p style="text-align: center;">138</p> <p>1 MR. MALONE: Objection to 2 the form of the question as calling 3 for a legal conclusion from a lay 4 witness. You can answer as to your 5 understanding. 6 BY MS. YU: 7 Q. As to the damages that 8 you're seeking to recover through 9 this litigation, is there anything 10 other than your benefits are less 11 under the cash balance plan formula 12 than you feel they would have been 13 under the old plan, is there anything 14 else that you're seeking to recover 15 in this litigation? 16 MR. MALONE: Same 17 objection. 18 THE WITNESS: The only way 19 I can answer that is if they had 20 never instituted the cash balance 21 plan, if the old plan still exists, I 22 would not be here today. I don't 23 know if that answers your question. 24 BY MS. YU:</p>	<p style="text-align: center;">140</p> <p>1 BY MS. YU: 2 Q. Yes. 3 A. I haven't given thought for 4 that. My primary focus has been 5 strictly on trying to right a wrong, 6 help other employees that are in my 7 situation. I myself aren't looking 8 for any huge personal gain out of 9 this. But for now, all I want to do 10 is just correct this wrongdoing. 11 Q. Tell me what you think the 12 wrongdoing is. 13 MR. MALONE: Object to the 14 form of the question. It calls for a 15 legal opinion from a lay witness. 16 You should answer to your 17 understanding. 18 THE WITNESS: If you were 19 to take a poll of the employees of 20 the utility that I work for, The 21 Heritage Company, you would find out 22 that 100 percent of those individuals 23 came to work for that company because 24 they knew it was secure, had a good</p>
<p style="text-align: center;">139</p> <p>1 Q. What is the recovery that 2 you are seeking from the defendants 3 in this litigation? 4 MR. MALONE: Object to the 5 form of the question. Calling for 6 legal opinion from a lay witness. 7 You can testify as to your 8 understanding. 9 THE WITNESS: Fair. I'm 10 not looking to bankrupt the company, 11 punish anyone, see anyone get fired. 12 I'm just trying to correct a wrong. 13 BY MS. YU: 14 Q. How in your view should it 15 be corrected? 16 A. Honestly? 17 Q. Yes. 18 A. Put it back the way it was. 19 Q. Is there anything else 20 you're looking for? 21 MR. MALONE: Object to the 22 form of the question. 23 THE WITNESS: In 24 compensation?</p>	<p style="text-align: center;">141</p> <p>1 retirement plan, and knew that they 2 could work 25, 30 years, and at that 3 end be able to retire with a nice, 4 full retirement. 5 That's how I would answer 6 that question. I don't know what 7 else you want me to -- you're 8 searching for. 9 BY MS. YU: 10 Q. What did the company do 11 that was wrong? 12 A. They -- they took something 13 that was -- had been in existence for 14 years, decades, and said, We don't 15 care how long you've been here, we're 16 changing the rules, and we're going 17 to say that this is now the 18 retirement plan, and for those folks 19 not grandfathered, like it or not, 20 this is it. 21 I would assume if they 22 said, Here's a new retirement plan; 23 here's an old retirement plan; 24 everybody, take your pick, I would</p>



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<p style="text-align: center;">154</p> <p>1 A. Yes.</p> <p>2 Q. So it gives an opening</p> <p>3 balance and an ending balance for</p> <p>4 that calendar year; is that correct?</p> <p>5 A. Yes.</p> <p>6 Q. The same information is</p> <p>7 contained in the statements for</p> <p>8 calendar years 2003 and 2004. 2003</p> <p>9 is JMC 11 and 12 and then 2004 is JMC</p> <p>10 13 and 14. The statement for</p> <p>11 calendar year 2005 is included in JMC</p> <p>12 15 and 16. Is that right?</p> <p>13 A. Yes.</p> <p>14 Q. If you compare the</p> <p>15 balances, is there ever a time that</p> <p>16 the balance declines from year to</p> <p>17 year? Did it ever go down?</p> <p>18 A. You're referring to the</p> <p>19 ending balance on each statement?</p> <p>20 Q. Look at the ending balance</p> <p>21 of each statement.</p> <p>22 A. No.</p> <p>23 Q. So each year the ending</p> <p>24 balance increased?</p>	<p style="text-align: center;">156</p> <p>1 doubt the accuracy of these</p> <p>2 calculations?</p> <p>3 A. I have no way of proving</p> <p>4 them to be anything other than</p> <p>5 accurate.</p> <p>6 Q. Do you believe they're</p> <p>7 accurate?</p> <p>8 A. I have to assume so. I</p> <p>9 don't have -- I don't do the</p> <p>10 computations. I don't keep -- I get</p> <p>11 a statement and that's what it says</p> <p>12 it's on there, so I have to assume</p> <p>13 Vanguard is smart enough not to make</p> <p>14 a mistake.</p> <p>15 Q. Understanding that you have</p> <p>16 to rely on others to do the actual</p> <p>17 calculations for you, based on the</p> <p>18 information that's contained</p> <p>19 regarding your date of birth and your</p> <p>20 date of hire, all those things that</p> <p>21 are contained in these pages from JMC</p> <p>22 17 to 19, is there anything that</p> <p>23 leads you to question the accuracy of</p> <p>24 the information that's provided</p>
<p style="text-align: center;">155</p> <p>1 A. Some amount, yes.</p> <p>2 Q. Take a look at JMC 17</p> <p>3 through 19. Do you recognize these</p> <p>4 pages?</p> <p>5 A. Looks like a statement,</p> <p>6 estimate of retirement benefits for a</p> <p>7 specific retirement date.</p> <p>8 Q. Do you recall receiving</p> <p>9 this?</p> <p>10 A. I may have, yes.</p> <p>11 Q. Did you request that these</p> <p>12 calculations be done?</p> <p>13 A. Since this has the Vanguard</p> <p>14 logo on it, I would assume it was</p> <p>15 something that I requested perhaps,</p> <p>16 but they may have sent it to me</p> <p>17 without my request. I couldn't</p> <p>18 remember.</p> <p>19 Q. The date on these pages is</p> <p>20 November 30th, 2004. Again, it's JMC</p> <p>21 17 through 19. There are estimates</p> <p>22 of benefit amounts on JMC 18 in</p> <p>23 various forms.</p> <p>24 Do you have any reason to</p>	<p style="text-align: center;">157</p> <p>1 here?</p> <p>2 A. Having no other way or any</p> <p>3 other thing to compare it to, I have</p> <p>4 to accept it for the way it is.</p> <p>5 Q. Your date of birth and</p> <p>6 termination date are accurate here;</p> <p>7 correct?</p> <p>8 MR. MALONE: "Here" being</p> <p>9 on JMC 17?</p> <p>10 MS. YU: 17.</p> <p>11 MR. MALONE: I'm going to</p> <p>12 object to the form of the question.</p> <p>13 MS. HOFFMAN: It's actually</p> <p>14 a proposed termination date since</p> <p>15 it's a request.</p> <p>16 MS. YU: I said date of</p> <p>17 birth and date of hire. That's what</p> <p>18 I meant to say.</p> <p>19 MR. MALONE: Oh, I'm sorry.</p> <p>20 I thought you said termination date.</p> <p>21 THE WITNESS: I think I'm</p> <p>22 still alive.</p> <p>23 MR. MALONE: Well, you're</p> <p>24 still working, too.</p>



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<p style="text-align: center;">186</p> <p>1 plan when provided to older employees 2 puts them at a disadvantage. 3 If I was 22 years old or 23 4 years old starting in a new company 5 in a cash balance plan, I probably 6 would have had no objections to it. 7 BY MS. YU: 8 Q. So if that younger worker 9 in their twenties stays working for 10 the same company in a cash balance 11 plan until their fifties, would the 12 cash balance plan be age 13 discriminatory by the time that they 14 reached their fifties? 15 MR. MALONE: I have the 16 same objection insofar as it calls 17 for a legal conclusion. 18 THE WITNESS: Not knowing 19 that and only going by the material 20 that was presented at various times 21 from the company, that that's what 22 the message was that they presented, 23 that if a young person moves in the 24 cash balance plan at a young age</p>	<p style="text-align: center;">188</p> <p>1 referring to? 2 A. What I've read in AARP, 3 that kind of thing. 4 Q. Okay. So not necessarily 5 materials from the company? 6 A. No. No. 7 Q. Is there any material that 8 you've received from the company that 9 you feel supports your age 10 discrimination claim? 11 MR. MALONE: Object to the 12 form of the question as far as it 13 calls for a legal conclusion from a 14 lay witness. 15 THE WITNESS: The 16 information itself? The printed 17 information that was supplied, 18 whether -- I'm not sure. I know as 19 it affects me personally -- could you 20 repeat that question, because I'm 21 getting -- we've been going over this 22 all day long; I'm starting to get 23 fuzzy. 24 BY MS. YU:</p>
<p style="text-align: center;">187</p> <p>1 they'll be fine. 2 MS. YU: Could you read 3 back that answer, please. 4 MR. MALONE: You can read 5 the question, too. 6 (The reporter read back the 7 following testimony: 8 "Q. So if that younger 9 worker in their twenties stays 10 working for the same company in a 11 cash balance plan until their 12 fifties, would the cash balance plan 13 be age discriminatory by the time 14 that they reached their fifties? 15 "A. Not knowing that and 16 only going by the material that was 17 presented at various times from the 18 company, that that's what the message 19 was that they presented, that if a 20 young person moves in the cash 21 balance plan at a young age they'll 22 be fine.") 23 BY MS. YU: 24 Q. What materials are you</p>	<p style="text-align: center;">189</p> <p>1 Q. I'm just asking whether 2 there is any material that you 3 received from your employer that you 4 think supports your claim of age 5 discrimination with respect to the 6 cash balance plan. 7 MR. MALONE: I have the 8 same objection, that it calls for a 9 legal conclusion. 10 THE WITNESS: The piece 11 that I would assume would give that 12 impression would be the age at which 13 you would be placed into the cash 14 balance plan. For me that would be 15 49 years and whatever months. 16 BY MS. YU: 17 Q. I just want to make sure 18 that I understand. Are you referring 19 to the grandfathering clause? 20 A. Yes. 21 Q. Are there any other 22 materials that you feel supports your 23 claim of age discrimination from the 24 company?</p>



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EXHIBIT 5



CONFIDENTIAL

In the Matter Of:

Charles, et al.

V.

Pepco Holdings, Inc., et al.

C.A. # 05-702

Transcript of:
Thomas S. Troup

January 12, 2007

Wilcox & Fetzer, Ltd.
Phone: 302-655-0477
Fax: 302-655-0497
Email: lhertzog@wilfet.com
Internet: www.wilfet.com

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

J. MICHAEL CHARLES; MAURICE W. WARD,)
JR.; and JOSEPH I. FINK, JR., on)
behalf of themselves and all others)
similarly situated,)
)
Plaintiffs,)
) Civil Action
v.) No. 05-702
)
PEPCO HOLDINGS, INC., CONECTIV, and)
PEPCO HOLDINGS RETIREMENT PLAN,) PAGE 43 IS
) CONFIDENTIAL
Defendants.)

Deposition of THOMAS S. TROUP taken
pursuant to notice at the law offices of Pepper
Hamilton LLP, 1313 Market Street, Hercules Plaza,
Fifth Floor, Wilmington, Delaware, beginning at
9:35 a.m. on Friday, January 12, 2007, before Kathleen
White Palmer, Registered Merit Reporter and Notary
Public.

APPEARANCES:

JOSEPH G. SAUDER, ESQUIRE
CHIMICLES & TIKELLIS LLP
One Haverford Centre
Haverford, Pennsylvania 19041
for the Plaintiffs

KAY KYUNGSUN YU, ESQUIRE
PEPPER HAMILTON LLP
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1 **A. Yes.**
2 Q. Did you access the online information on the
3 intranet from time to time?
4 **A. You mean this type of information?**
5 Q. Any type of information.
6 **A. Company information?**
7 Q. Yes.
8 **A. Some. You know, yeah.**
9 Q. Did you use it to access information on the
10 cash balance plan?
11 **A. No, not that I remember.**
12 Q. Exhibit D-13 is a compilation of slides. The
13 first one says "Conectiv Cash Balance Pension Plan"
14 and it's dated July 1999.
15 Do you recall whether these slides were
16 part of the presentation made regarding the cash
17 balance plan in that time frame?
18 **A. It looks like, you know, the type of handout**
19 **that would have been provided at a, you know, a**
20 **meeting to go over the cash balance pension plan.**
21 Q. Do you recall attending a meeting on the cash
22 balance plan?
23 **A. Yeah, I attended a meeting, yes.**
24 Q. Was it, to your recollection, the July 1999.

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1 time frame?
2 **A. I thought it would have been sooner than that.**
3 **If the plan would have been started in 1/1/99, that**
4 **they would have had meetings prior to its, you know,**
5 **starting. But, you know, I did attend -- when they**
6 **had meetings regarding, you know, benefits or**
7 **whatever, you know, I attended those meetings, yes.**
8 Q. Will you look at MWW-220, which is the second
9 page of Exhibit D-13? The first slide on the upper
10 left-hand corner refers to The Wall Street Journal and
11 congressional hearings. Do you recall that part of
12 the discussion?
13 MR. SAUDER: I just object to the form,
14 assuming there was a discussion.
15 But you can answer.
16 **A. I don't remember congressional hearings. I**
17 **remember the mention of Wall Street Journal articles,**
18 **and that's -- you know, I don't remember the rest of**
19 **it. You know, it's not something that stuck with me**
20 **from a meeting.**
21 Q. What's your recollection of the discussion
22 about Wall Street Journal articles?
23 **A. That there were companies that, you know, had**
24 **moved to cash balance pension plans and that, you**

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1 **know, the employees had concerns.**
2 Q. Did you do anything to follow up on The Wall
3 Street Journal articles? Did you look them up on the
4 Internet?
5 **A. No, I didn't do that.**
6 Q. Are there periodicals or newspapers that you
7 read on a regular basis?
8 **A. Typically the local paper.**
9 Q. Which one is that?
10 **A. It would be The News Journal.**
11 Q. Are there any other magazines or periodicals
12 that you read on a regular basis?
13 **A. No, not really. I watch TV.**
14 Q. Do you watch the news on TV?
15 **A. Excuse m?**
16 Q. Do you watch the news on TV?
17 **A. Occasionally.**
18 Q. Do you read the paper every day or less than
19 every day?
20 **A. Probably several times a week.**
21 Q. How long have you been reading your local paper
22 on a regular basis?
23 **A. You know, ever since we moved to Delaware,**
24 **probably.**

Page 33

1 Q. When was that?
2 **A. 1979.**
3 Q. When was the first time you consulted with an
4 attorney regarding your cash balance plan?
5 **A. I would have made a phone call to Mr. Sauder's**
6 **firm probably -- I guess it was probably about a year**
7 **ago.**
8 Q. Have you spoken with any other attorneys about
9 the cash balance plan?
10 **A. Yeah. I had contacted several other attorneys**
11 **prior to that about, you know, initiating this type of**
12 **a suit, but, you know, they weren't interested in**
13 **doing it. And that would have been about, you know,**
14 **six months to a year prior to that.**
15 Q. How many attorneys did you consult?
16 **A. There was one in Wilmington and one in**
17 **Philadelphia. I don't remember the names, though.**
18 I'm sorry.
19 Q. How did you first learn about the lawsuit
20 brought by Mr. Charles, Mr. Ward, and Mr. Firk?
21 **A. I heard it through the grapevine at work and,**
22 **you know, since I had been looking to pursue, you**
23 **know, a suit myself and been unsuccessful, you know,**
24 **when I heard this, you know, it piqued my interest.**

9 (Pages 30 to 33)

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1 So it contains information for each year
2 from 2000 through 2005?
3 **A. Yes.**
4 MR. SAUDER: Just for the record, this is
5 marked TST2 through TST8.
6 Q. Is there any information that's contained in
7 Exhibit D-34 that is inaccurate to your knowledge?
8 **A. No.**
9 Q. Does your ending balance increase every year?
10 **A. Yes.**
11 (Defendant's Exhibit 35 was marked for
12 identification.)
13 BY MS. YU:
14 Q. Mr. Troup, Exhibit D-35 says "InSight online"
15 on the top of it and it's dated April 7th, 2000. Do
16 you recognize this document?
17 **A. Yes.**
18 Q. How did you obtain this document?
19 **A. I think the company provided it to us or I -- I**
20 **don't specifically remember how I got it, but, you**
21 **know, it would have been issued by the company, I**
22 **believe. At the time, Connectiv.**
23 Q. To your knowledge, did you obtain this document
24 sometime in April 2000?

1 1997?
2 **A. It shows what my accrued invested retirement**
3 **benefit would have been as of January 1st, 1997. And**
4 **then there's also a chart there that, you know,**
5 **projects them forward.**
6 Q. This is personalized information for you?
7 **A. Yes, correct.**
8 Q. Have you written any e-mails about the cash
9 balance plan?
10 **A. Not that I remember, no.**
11 Q. Have you gotten any e-mails about the cash
12 balance plan other than employer communications?
13 **A. No, not that I'm aware of.**
14 Q. And I said e-mail generally. Do you have a
15 home e-mail address?
16 **A. No. No, I do not.**
17 Q. You have an e-mail address for work?
18 **A. Yes.**
19 Q. Is that the only e-mail account that you use?
20 **A. Yes. You know, there might be something, you**
21 **know, sent to my wife, but -- you know, her e-mail**
22 **address at home, but very little is used there.**
23 Q. Would there be anything about cash balance
24 plans on your home e-mail?

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Page 53

1 **A. Yes, I think so.**
2 Q. Is this part of the information that was
3 available online on the intranet?
4 **A. It appears to be, yes. You know, when the**
5 **company provides you with communications, you know,**
6 **they also provide you with a link that you can just**
7 **kind of click on it and it zips you to it. That's**
8 **probably how I would have accessed this as opposed to**
9 **specifically searching for it, you know, on the**
10 **intranet.**
11 (Defendant's Exhibit 36 was marked for
12 identification.)
13 BY MS. YU:
14 Q. Exhibit D-36 is a document that says "Your
15 Total Compensation Statement, 1997," and it has
16 "Delmarva Power" on it. Do you recognize this
17 document?
18 **A. Yes.**
19 Q. This document is numbered TST10 through 22.
20 What's described in this document?
21 **A. The total compensation provided me, you know,**
22 **by Delmarva Power in the year 1997.**
23 Q. If you turn to page TST20, are these
24 calculations showing what your benefits were as of

1 **A. No.**
2 Q. Mr. Troup, what is your understanding of the
3 claims that you have brought in your lawsuit?
4 **A. The accounts, as I understand them, that have**
5 **been brought is that the company, one, didn't**
6 **adequately tell us about the fact that the annuity**
7 **value of the pension plan could go down and that, you**
8 **know, the annuity value of the plan has gone down and**
9 **that it's not supposed to go down.**
10 Q. And when you say it's not supposed to go down,
11 it's not supposed to go down for any reason?
12 MR. SAUDER: I just object and just caution
13 the witness with regard to any attorney/client
14 communications, if you can answer that question
15 outside of any attorney/client communications, then
16 you are free to answer the question.
17 **A. I don't know how to do that.**
18 Q. What other claims are you asserting in your
19 lawsuit?
20 **A. Those are the ones that I remember. I know**
21 **there's four counts. I don't specifically remember**
22 **what the other two are.**
23 Q. Is part of your claim that you did not get
24 timely notice?

14 (Pages 50 to 53)

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1 portable benefits?
2 **A. Yes.**
3 Q. What does that mean?
4 **A. You leave the company, you can take it with**
5 **you.**
6 Q. Is it your understanding that the cash balance
7 plan is more portable than the benefits under the old
8 plan?
9 **A. I believe, yes, that's, you know, that's true.**
10 Q. So if an employee is looking for portable
11 benefits, are they better off under the cash balance
12 plan than under the old plan?
13 MR. SAUDER: Objection.
14 **A. You know, I -- I think that depends upon the**
15 **individual circumstances.**
16 Q. What remedy are you looking for from the Court
17 in this lawsuit?
18 **A. Reinstatement into the defined benefit plan.**
19 Q. Is there anything else you are looking for?
20 **A. No.**
21 Q. Do you understand that this lawsuit has been
22 brought as a class action?
23 **A. Yes.**
24 Q. Are you seeking to be a class representative?

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1 **A. Yes.**
2 Q. What's your understanding of your duties as a
3 class representative?
4 **A. It would be my duties to represent the**
5 **interests of the members of the class.**
6 Q. What is your understanding of how that class is
7 defined?
8 **A. It would include those people who are in the**
9 **cash balance plan and any people who would have been**
10 **grandfathered after the grandfathering period ends.**
11 Q. Does that class include everyone regardless of
12 their age?
13 **A. I believe so, yes.**
14 Q. Do you believe that everybody in the class has
15 the same interests?
16 **A. Not necessarily, no, not exactly the same**
17 **interests. I think there is commonality, but, you**
18 **know, there could be some differences, also.**
19 Q. Do you think everybody who is part of the class
20 that you were describing is worse off under the cash
21 balance plan?
22 **A. I don't know the answer to that.**
23 **(Defendant's Exhibit 37 was marked for**
24 **identification.)**

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1 BY MS. YU:
2 Q. We have just marked as Exhibit D-37 a copy of
3 the class action complaint that is captioned Thomas S.
4 Troup vs. Pepco Holdings, Inc., et al.
5 Do you recognize this document?
6 **A. Yes.**
7 Q. Did you participate in the preparation of this
8 document, the drafting of this document at all?
9 **A. No. I mean, you know, my attorneys would have**
10 **provided me a copy of it, you know, is this**
11 **information accurate. You know, if that's what you**
12 **mean by "drafting," the answer would be yes. If, you**
13 **know -- but putting the form together and, you know,**
14 **laying it out in this particular order, you know, no.**
15 Q. If you would take a look at paragraph 39, which
16 starts on page 13 and continues on to page 14, could
17 you just review that paragraph for a minute?
18 **A. (The witness reviews the document.)**
19 Q. What is your understanding of what an accrued
20 benefit is?
21 **A. What is due me at some later date.**
22 Q. Is it your understanding that under the cash
23 balance plan your accrued benefit is the amount of
24 your annuity at age 65?

Page 61

1 **A. Say that again, please.**
2 Q. Is it your understanding that under the cash
3 balance plan your accrued benefit is the annuity
4 amount that you would receive at age 65?
5 **A. Until I spoke with my attorney, I wasn't aware**
6 **that age 65 was a significant date or period of time**
7 **that applied to, you know, the cash balance plan.**
8 Q. On page 14 in paragraph 39, the factual
9 allegations include percentages in various years where
10 your accrued benefit has decreased and then increased.
11 Do you know how these percentages were calculated?
12 MR. SAUDER: Objection to the extent you
13 can answer that question without violating any
14 attorney/client communication.
15 MS. YU: My particular question was does he
16 know, and it's a yes-or-no answer.
17 BY MS. YU:
18 Q. I don't think that you have to rely on your
19 advice of counsel to answer yes or no whether you know
20 or not how these were calculated.
21 **A. No.**
22 Q. Do you have an understanding of what caused the
23 increases and decreases?
24 MR. SAUDER: Same objection.

16 (Pages 58 to 61)

302-655-0477

EXHIBIT 6

Charles, Mike

From: Paoli, Frances
Sent: Thursday, August 21, 2003 9:02 AM
To: Charles, Mike
Subject: RE: Cash Balance plan

Good Morning Mike,

Yes, our benefits design group is aware of the IBM case and are following this issue and all of the activity surrounding cash balance plans. We expect the ultimate impact of this case will not be known for some time and we will continue to follow all of the activity and make decisions at the company level at the appropriate time.

I hope this information is helpful. If you have any additional questions, please contact the HR Service Center at 800-201-4718.

Frances Anne Paoli
Conectiv HR Service Center

-----Original Message-----

From: Charles, Mike
Sent: Wednesday, August 20, 2003 11:14 AM
To: Conectiv HR
Subject: Cash Balance plan

Dear HR,

Are you following the current events of the class action lawsuit by the employees of IBM as it pertains to IBM's decision to convert their employees retirement plan into the Cash Balance Plan?

As one of the A. E. employees that missed the cut off date of 1/1/99 by both age and time with the Company by only a few months (start date 9/10/79 birthday 10/18/49) this event has caught my attention. I've always felt from the inception of the cash balance plan that it was unfair. However, as a employee I knew there was little I could do.

What would be the impact to Conectiv employees like me if the suit against IBM is ultimately ruled in favor of the employees? Would the employees that did not make the cut off of have to sue Conectiv to get the same option as those that did make the cut off? Or would Conectiv automatically provide the employees that did not make the cut off date the same option (A.E. Plan or Cash Balance Plan) as those that did make the cut off?

Thank you for your time

J. Michael Charles
Senior Account Manager
Conectiv
856 453 5012 NJ
8 500 5012 Internal
856 305 0032 cell
856 435 5040 NJ Fax
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JMC00459

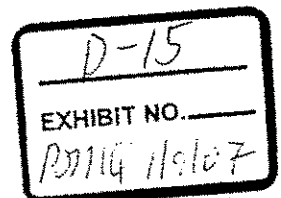


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THE WALL STREET JOURNAL

The Wall Street Journal

June 14, 1999 Monday

SECTION: Pg. C1

LENGTH: 948 words

HEADLINE: IBM Pension-Plan Changes Spark Ire-Filled Web Site

BYLINE: By Ellen E. Schultz and Jon G. Auerbach, Staff Reporters of The Wall Street Journal

BODY:

Hunkered down in front of computer screens with their office doors closed, employees of International Business Machines Corp. are logging onto a spicy new Web site: The IBM Pension Club on Yahoo.

Created less than three weeks ago by an IBM employee, the site is getting 15,000 hits a day, and hundreds of messages from mostly infuriated employees, who are exchanging calculations, complaints and condolences involving changes coming to their pension plan on July 1. At that time, IBM is converting its pension plan to a "cash balance" plan, an increasingly common variety of pension that usually reduces benefits for longer-service workers.

"People are in total shock" about the conversion, says William L. Edge, an 18-year IBM veteran in Atlanta who works for IBM's year-2000 sales and marketing team. After finding out about the site, he spent an entire evening scouring messages on the site. Mr. Edge, 46 years old, estimates that the value of his pension will fall to \$350,000 from \$600,000 under the new plan. "I'm going to have to stay at IBM an additional five years" to make up the difference, he complains.

An IBM spokesman said the company decided to make the shift because the new plan awards "performance and not strictly tenure." He said the new plan is allowing the company to increase other types of compensation, such as stock options.

IBM, based in Armonk, N.Y., is one of more than 300 employers to so far make this money-saving pension switch, and while plenty of workers elsewhere are pretty steamed, this is the first Web uprising. In the past, a complex pension change usually sailed over the heads of employees; in the Internet era, this isn't so, especially when a company has thousands of computer uber-dorks on staff.

Indeed, many of IBM's 260,000 employees around the world are using the devices they make -- computers -- to

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protest the pension change. "I'd like to think this group is too intelligent and motivated to let a bunch of corporate actuaries sell us down the river and think we're too stupid to figure out their half-truths," notes NiceGuys-Win-in-the-End.

Kevin Chapman, an IBM engineer in Rochester, Minn., says a friend told him about the Yahoo! Inc. site last Wednesday and he's since spent hours reading the postings. Mr. Chapman, 41, estimates that the value of his pension will be set back 30% to 50% under the new plan. While he's worked for IBM 11 years, he is too young to qualify for special benefits that people closer to retirement can get to help them retain benefits they would have received under the old plan.

The Yahoo site is also a place where people are simply blowing off steam, including opining on such matters as the salary of IBM Chief Executive Louis V. Gerstner Jr. One posting suggests that workers hire an airplane to drag a banner between IBM's San Jose, Calif., Cottle Road/Santa Teresa lab and Almaden Research facility for 90 minutes, during lunch time. "It would cost about \$480 to fly a banner," writes davejay2. "I think that would be money well spent, and I might just spring for it myself. You get 40 characters including spaces. I'm taking suggestions for the message."

His suggestion: "Hey Lou, 'thou shalt not Steal."

After the pension change was announced in May, employees began comparing their old and new benefits, using information provided by the company as well as numbers they crunched using an "Estimator" pension calculator on the company's own Web site. But IBM took the estimator off-line for several weeks starting in May, and, when reactivated, it no longer allowed employees to calculate benefits under the existing plan, Mr. Edge says. He and some others believe the company eliminated the feature so employees couldn't calculate their benefit reductions.

An IBM spokesman said the company took the old tool off-line because "it really does not seem appropriate to be modeling a plan that no longer exists."

Whatever the motivation, the action only stirred IBMers into a further Webfrenzy. They began picking apart virtually every actuarial assumption related to IBM's calculation of benefits.

"The mathematically disadvantaged half-wits in HR can't hold up a conversation on the topic of calculating anything," notes "IBM-Ghost." "They are more like used-car salesmen trying to sell a car with a sawdust filled transmission (my apologies to any used-car salesmen as you probably have more integrity than HR)," wrote "idontknowaboutyou."

To be fair, other postings mention human-resource staff and managers who have tried to help them figure out where they stand.

The creator of the site, Sang J. Moon, a 31-year-old information-technology specialist with IBM Global Services in Bethesda, Md., says he didn't intend to create an Internet flamethrower. He intended the site, he says, as a place where employees -- both for and against the change -- could share information and ideas.

Mr. Moon, who has been with IBM for about five years, says he initially didn't understand why people were upset with the impending change. But after weeks of monitoring the site, he now has "respect" for people who believe they'll lose major benefits. (That monitoring doesn't take place at the office; Mr. Moon says his supervisor warned him not to watch the site while at work, and not to use his company computer.)

The Yahoo IBM Pension Club site isn't the only one with posts about IBM's pension plan. Just 10 days ago, an IBM employee in Austin, Texas, set up www.cashpensions.com, packed with information for employees of any company to use to calculate their pensions and contact their politicians. Meanwhile, Yahoo also features a site encouraging IBM employees to channel their frustration into a unionization drive.

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THE WALL STREET JOURNAL

The Wall Street Journal

May 5, 1999 Wednesday

SECTION: Pg. C1

LENGTH: 1120 words

HEADLINE: Actuaries Become Red-Faced Over Recorded Pension Talk

BYLINE: By Ellen E. Schultz, Staff Reporter of The Wall Street Journal

BODY:

Tape recordings of indiscreet gabbing, Congressional sessions at which they are played. And subsequent red faces.

No, this isn't an issue of national security. We are talking actuaries.

The tapes in question weren't recorded surreptitiously, but with the knowledge of the folks now embarrassed by them. And they are at the center of a controversy.

How so? On the tapes -- often in abstruse jargon but occasionally in comprehensible English, immortalized by firms that routinely tape conference sessions--actuaries and lawyers candidly discuss things that perhaps they would rather the whole world not know. Matters such as how they help employers cut pension benefits and change retirement plans to reshape their work forces -- contradicting, at times, what they have been saying publicly about the reasons for the changes.

And the chatter has relevance to millions of workers because companies nationwide are converting pension plans to the style often touted on these tapes, so-called cash-balance plans. These new plans provide hypothetical employee "accounts" into which employers make annual contributions, and the accounts earn "interest."

Conversion of an old-fashioned pension plan into the new style also often means that accrual of pension benefits can halt, for years, for older, longtime employees, and these workers' retirement benefits often are significantly smaller than they would be under a traditional pension. Employers often play down these effects when announcing their conversions. But critics of the new plans say it is precisely these cost-saving features that make them attractive to employers.

That is where the tapes come in, because they shed light on the thinking of those who are behind the pension

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shuffle.

The tapes came to light when Denver attorney William Carr, who was doing research on cash-balance plans, reviewed more than 40 hours of coma-inducing cassettes from conferences with titles such as "Cash Balance Plans: Current Issues" and "Nontraditional Plans After General Agreement on Tariffs and Trade." He recently played the tapes at a briefing for congressional staffers on disclosure issues in pensions.

A sample of the taped comments shows why they are finding their way into the Sony Walkmans of other attorneys, congressional staff, the Internal Revenue Service, the U.S. Treasury and the American Association of Retired Persons, sparking a stir in the seemingly low-profile actuarial world.

Particularly embarrassing are the comments directly contradicting recent public utterances of cash-balance-plan promoters. For instance, at the Senate committee briefing on pension-disclosure issues, staffers passed around an information release that PricewaterhouseCoopers, a leading pension consultant to employers, sent to lawmakers and the news media. It noted that recent newspaper articles "leave readers with the unsubstantiated conclusion that corporate America uses cash-balance plans to mask significant reductions in pension benefits and costs."

It also noted: "It is unfair to imply that employers chose to switch to cash-balance plans in order to mask benefit reductions."

Now listen to the tapes: "... Converting to a cash-balance plan does have an advantage as it masks a lot of the changes. ... There is very little comparison that can be done between the two plans," said William Torrie, an actuary at PricewaterhouseCoopers, at a Society of Actuaries meeting in New York in October 1998.

"If you decide your plan's too rich, and you want to cut back, and you only want to do it for new hires, changing to a totally different type of plan will let you do that without being obvious about it," said Norman Clausen, a principal at consulting firm Kwasha Lipton, now a unit of PricewaterhouseCoopers, at a Society of Actuaries meeting in Colorado Springs, Colo., in June 1996.

A spokesman for PricewaterhouseCoopers responds: "The quotes being circulated by lawyers and others are taken out of context and are relatively small elements of a much-larger presentation on the issues of cash-balance plans."

Elsewhere in the tapes, addressing the question of whether cash-balance plans reduce benefits, Amy Viener, an actuary at William M. Mercer Inc., noted at the October actuary society's meeting: "You switch to a cash-balance plan where the people are probably getting smaller benefits, at least the older-longer-service people; but they are really happy, and they think you are great for doing it."

An actuary with Watson Wyatt Worldwide who spoke on a panel called "Introduction to Cash Balance/Pension Equity Plans" alongside Ms. Viener, is heard saying on a tape: "It is not until they are ready to retire that they understand how little they are actually getting." "Right, but they're happy while they're employed," responded Ms. Viener of Mercer during the panel discussion.

In a written statement yesterday, Ms. Viener emphasizes that there are many benefits to cash-balance plans, including a "more-equitable approach" to different age groups, and that "most employees seem to prefer them." Among the pluses: Employees who change jobs "will fare much better under a cash-balance plan."

Other tapes capture actuaries wondering about their responsibility under current disclosure laws, which require employers to notify employees of significant cuts in retirement benefits. The law "doesn't require you to say, 'We're significantly lowering your benefit.' All it says is, 'Describe the amendment.' So you describe the amendment," noted Paul Strella, a lawyer with Mercer, at the same New York meetings.

A Mercer spokeswoman says Mr. Strella was traveling on client business and was unavailable for comment.

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Kyle Brown, an actuary at Watson Wyatt, also noted on one of the tapes: "Since the [required notice] doesn't have to include the words that 'your rate of future-benefit accrual is being reduced,' you don't have to say those magic words. You just have to describe what is happening under the plan. . . . I wouldn't put in those magic words."

A spokesman for Watson Wyatt says, "The term 'magic words' was a lawyer's reference to the triggering words in the [disclosure] statute." He adds that Mr. Brown was advocating clear communication to plan participants.

Donald Grubbs, a consulting actuary for 40 years and former director of the actuarial division at the Internal Revenue Service in Washington, says actuaries are like anyone else: "There are those that are very conscientious and those that are maybe less so." Still, he adds, cash-balance plans have a tendency to reduce benefits for older people, and "I'd think anyone making that change should make that clear to employees."

(See related letter: "Letters to the Editor: Truth Be Told. . ." -- WSJ May 12, 1999)

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THE WALL STREET JOURNAL

The Wall Street Journal

February 11, 1999 Thursday

SECTION: Fund Track; Pg. C1

LENGTH: 1470 words

HEADLINE: Older Workers Fight 'Cash Balance' Plans

BYLINE: By Ellen E. Schultz, Staff Reporter of The Wall Street Journal

BODY:

When is equal treatment of workers really unequal when it comes to pensions?

That question is at the crux of a lawsuit brought by older workers at Onan Corp., a Cummins Engine Co. unit, challenging a new type of pension plan that is saving corporations millions of dollars but reducing the pension benefits of older workers.

The issue is whether the new pension programs, called "cash balance" or "pension equity" plans, discriminate against older workers, even though they appear to pay older workers the same benefit -- and, in some cases, a bigger benefit -- than younger workers receive.

In Onan's case, the cash-balance plan adopted in 1989 provides all workers with annual credits of about 3.5% of their pay, an amount that is placed, like other such plans, into hypothetical individual "accounts" that then earn interest. But a class-action lawsuit filed in May 1997 in U.S. District Court in Indianapolis on behalf of workers argues that this treatment is in fact unequal. The reason is basically twofold: Older workers have less time to use the power of compounded interest to build up benefits, and the benefits they receive under the new plan in most cases fall short of what they would have received had the company's old-fashioned pension plan remained in place. Because younger workers are better off on both fronts, the lawsuit contends that the new pension plan is discriminatory. The suit is scheduled for trial in December.

"People who are younger will be OK, but the old-timers got hurt," says 59-year-old Jan Alden, who worked at Onan for 25 years until she was laid off two years ago. She will soon begin collecting a \$200-a-month retirement check from the company. "This is simple, blatant age discrimination," maintains Stephen Langlie, an engineer who logged 37 years at Onan, based in Fridley, Minn., and is the force behind much of the legal activism there.

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For the company's part, a spokeswoman concedes that "some employees might find this [change] beneficial, others less beneficial." While various revisions by Onan to its pension program over the past two decades make comparisons difficult, Onan doesn't dispute that many older workers will receive lower benefits than they would have. But the spokeswoman adds, "Onan doesn't believe there can be age discrimination when anyone, regardless of age, gets the same contribution each year." Onan plans to fight the suit.

From the workers' perspective, the issue with those equal contributions is that a 25-year-old has 40 years to earn a compounded rate of return before retirement at age 65, while a 60-year old only has five years. This means that the rate of accrual of pension benefits is actually declining as a person ages.

What's more, Onan workers contend in their suit that they were harmed by being pulled from a pension plan under which a lot of their retirement pay would have been built up at the end of their careers. Under conventional pensions, as much as half of a worker's retirement benefit is earned in the last five or so years on the job.

The workers also say it is unfair that Onan, like many other employers, established opening balances for the workers' hypothetical "accounts" that were lower than the present value of their already earned pension benefits. This means that some older workers have spent years simply earning back their old benefits, not adding new ones. Younger workers, meanwhile, added new benefits right away.

There is little question these conversions can save companies millions of dollars and that older workers are the primary source of the savings. Actuaries estimate that cash-balance plans pay some older workers 50% less than what they would have received in traditional plans.

As employers by the hundreds switch to cash-balance-type pensions, older workers are in uncharted legal waters. The practice "might be legal under the Tax Code, though illegal under the Age Discrimination in Employment Act," says Deene Goodlaw, professor of law at Boalt Hall School of Law at the University of California at Berkeley. But this novel collision of age-discrimination and pension law has never been tested in the courts, and that is one reason pension experts are watching the Onan case closely. If courts were to rule in the workers' favor, cash-balance-type plans "will all crash and burn," says Thomas Lowman, an actuary at Bolton Offutt Donovan Inc., a Baltimore consulting firm. But he thinks it unlikely the plans will meet such a fate.

In defending the plans, employers don't dispute that the rate of accrual of pension benefits in a cash-balance plan goes down as workers age. Nor do they dispute that the federal Employee Retirement Income Security Act, the nation's pension law, prohibits pension plans from reducing the rate of accrual as workers age. Instead, these employers maintain that the law doesn't apply to them.

Employers generally interpret the law as applying only to conventional pensions, not to the new ones. They say cash-balance plans ought to be treated like 401(k)s, which, by law, are savings plans, not pensions. This distinction is important because federal law doesn't burden savings plans with the accrual rules.

However, critics counter that workers who participate in 401(k)s are entitled to keep all investment gains, while employers keep some investment gains under cash-balance plans.

In defending the plans, employers also note that the Internal Revenue Service, which enforces federal pension law, hasn't told anyone to stop what they are doing. "The IRS has looked the other way for more than a decade, so employers feel the IRS has acquiesced in their view of the law-that there is no age discrimination," says Lee Sheppard, a lawyer who recently wrote about the legal issues in *Tax Notes*, a tax journal in Arlington, Va.

The IRS declined to comment.

THE GABELLI IPO: The first publicly traded shares of Gabelli Asset Management Inc., the mutual-fund company run by noted stock picker Mario Gabelli, were priced last night at \$17.50 each and the IPO is to begin trading today on

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the New York Stock Exchange under the symbol GBL.

At the IPO price, Gabelli has a stockmarket value of \$525 million. The company raised \$105 million through the sale of six million shares, representing 20% of the company's equity; Mr. Gabelli will retain about 98% of its voting power.

In an amendment to its registration statement filed yesterday, the company said Mr. Gabelli received more than \$43 million in compensation in 1998. As part of the stock sale, he accepted a reduction of his share of the company's annual pretax profit to 10% from 20%. In exchange, Mr. Gabelli is due to receive a \$50 million lump-sum payment, plus 6% annual interest, in 2002. The firm expects to take a charge of \$1.10 a share in the current quarter to cover the deferred payment.

-- Patrick McGeehan

BOGLE JUNIOR: John Bogle Jr., a partner at Numeric Investors LP in Boston, is leaving the firm, according to an announcement from Langdon Wheeler, Numeric's president. Mr. Wheeler said that Mr. Bogle Jr., son of Vanguard Group founder John Bogle, is leaving "to pursue other opportunities." Mr. Wheeler noted that Mr. Bogle Jr. has been with Numeric almost since the firm's inception in 1989, and "has made many important contributions." Numeric uses quantitative analysis to pick stocks for its mutual funds.

The younger Mr. Bogle couldn't be reached for comment. He is known for a consumer-friendly business philosophy that matches his father's. In July 1996, for instance, he canceled an advisory contract to run a quantitative small-capitalization stock fund for Quantitative Group of Funds in a dispute over high fund expenses.

-- Pui-Wing Tam

FUND PERFORMANCE DERBY

How the Biggest Funds in the Category Performed

Total	Y-to-D	1 Year	3 Year	5 Years
Assets	12/31/98	2/09/98	2/09/96	2/09/94
(Billions)	2/09/99	2/09/99	2/09/99	2/05/99
MSDW US Govt;B				
\$ 4.98	+ 0.07%	+ 6.18%	+ 19.64%	+ 35.06%
Vankamp Govt Secs;A				
1.88	- 0.20	+ 6.92	+ 19.68	+ 34.13
Lord Abbett Inv:Govt;A				
1.69	+ 0.33	+ 7.46	+ 20.07	+ 32.44
Fidelity Govt Income				
1.58	- 0.49	+ 6.97	+ 19.81	+ 34.20
Putnam American Govt;A				
1.46	- 0.40	+ 7.09	+ 20.53	+ 38.63
Amer Fds Inc:US Govt				
1.36	- 0.42	+ 6.55	+ 19.13	+ 31.63
Strong Government				
1.33	- 0.10	+ 6.99	+ 20.53	+ 39.52
Federated Gv Inc Sec;F				

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1.26	- 0.08	+ 6.62	+ 21.47	+ 37.18
One Group:Govt Bond;Fid				
1.01	- 0.26	+ 6.93	+ 20.83	+ 38.32
Prudential Govt Inc;A				
0.84	- 0.75	+ 7.29	+ 19.33	+ 37.16
Lipper Gen'l U.S. Govt. Fd Indx				
--	- 0.42	+ 6.49	+ 19.23	+ 32.97
S&P 500 (divs. reinvested)				
--	- 0.94	+22.11	+ 95.57	+186.39

Source: Lipper

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CERTIFICATE OF SERVICE

I, Phillip T. Mellet, hereby certify that on February 16, 2007 a true and correct copy of the Defendants' Answering Brief in Opposition to Plaintiffs' Motion for Class Certification and appendix were served via ECF on the following:

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